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**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

SHAWN D. FRANCIS,

Appellant/Cross-Respondent,

v.

DEPARTMENT OF CORRECTIONS,

Respondent/Cross-Appellant.

BRIEF OF RESPONDENT/CROSS-APPELLANT

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I. INTRODUCTION

The Appellant, Shawn Francis, is incarcerated by the Respondent, the Department of Corrections (the Department). The Superior Court granted summary judgment in Mr. Francis' favor in a Public Records Act (PRA or the Act) action. The Superior Court found that the Department violated the PRA, and further, that it acted in "bad faith" for purposes of the newly-enacted inmate penalty statute, RCW 42.56.565(1). The court awarded a penalty of \$5 per day for part of the relevant time period and \$10 per day for the remainder, but declined to award costs. Mr. Francis appeals those rulings.

The Department cross-appeals the trial court's determination that the Department acted in "bad faith" for purposes of RCW 42.56.565(1). The superior court erred in determining "bad faith" by using the sixteen *Yousoufian* factors¹. These factors were established solely for use in determining the proper penalty amount under the PRA, not for determining whether an agency acted in "bad faith" under RCW 42.56.565(1). When considered under the proper standard---intentional, wrongful withholding---the Department's actions do not rise to the level of "bad faith", thus barring an award of penalties to Mr. Francis.

¹ *Yousoufian v. Office of Ron Sims*, 168 Wn.2d 444, 467-68, 229 P.3d 735 (2010) (*Yousoufian V*).

This Court should follow the historical definition of “bad faith” under the PRA and articulate the proper standard for assessing “bad faith” under RCW 42.56.565(1). This Court should then remand for the trial court to apply the proper standard, or alternatively, decide as a matter of law that the Department did not act in “bad faith”. In either event, absent a proper finding of “bad faith” under RCW 42.56.565(1), Mr. Francis is not entitled to any penalties under the PRA. Accordingly, the Court need not address Mr. Francis’ arguments about penalty amounts.

II. RESPONDENT’S ASSIGNMENT OF ERROR

The trial court erred in applying the sixteen *Yousoufian* factors to determine “bad faith” under RCW 42.56.565(1).

III. ISSUES PRESENTED

1. Whether the sixteen *Yousoufian* factors are the proper means to determine “bad faith” under RCW 42.56.565(1).
2. If the trial court properly determined “bad faith”, whether the trial court acted within its discretion in awarding penalties toward the bottom of the statutory range.
3. If the trial court properly determined “bad faith”, whether the trial court acted within its discretion in declining to award Mr. Francis costs and attorneys fees.
4. Whether the Department’s cross-appeal was timely filed.

IV. STATEMENT OF THE CASE

A. Factual History

Mr. Francis submitted a public records request to the Department on June 22, 2009. CP__; Appendix at 130². His request sought “[a]ny and all documents related to any reason and/or justification for the reason why inmates at the McNeil Island Corrections Center are not allowed to retain fans and hot pots in their cells, as well as any policy that may be in place to substantiate such restrictions on these items also.” CP__; Appendix at 134-35. Mr. Francis’ request was assigned tracking number PDU-7430 by Brett Lorentson, one of the Department’s Public Disclosure Specialists. *Id.*

As a Public Disclosure Specialist, Mr. Lorentson is tasked with tracking public records requests, and collecting responsive records. CP__; Appendix at 130. He accomplishes this by sending emails to those individuals who likely have responsive records, and asking those individuals to perform searches. *See* CP__; Appendix at 129-131. Mr. Lorentson has received three years of on-the-job training regarding the requirements of public disclosure, in addition to fourteen hours of dedicated training, some of which was provided by the Attorney General’s

² The Department’s Clerk’s Papers have been designated but not finalized as of the filing of this brief. The Department asks that it be allowed to file a Corrected Response once the Clerk’s Papers are finalized. The Department has attached a numbered Appendix of its Clerk’s Papers for the Court’s reference.

Office. *Id.* He is one of thirteen employees that track the 10,000 public records requests that the Department receives on average each year. CP__; Appendix at 132.

Mr. Lorentson responded to Mr. Francis' request by letter on July 1, 2009, explaining that he needed more time to respond. CP__; Appendix at 130. Mr. Lorentson further indicated that he would respond to Mr. Francis' request within 20 business days, on or before July 30, 2009. *Id.*

On July 2, 2009, Mr. Lorentson sent another letter to Mr. Francis informing him that fifteen pages of responsive documents had been located. *Id.* These fifteen pages consisted of a copy of DOC Policy 440.000, Personal Property for Offenders, effective March 1, 2009, and Administrative Bulletin AB-09-009 for the same policy, effective March 23, 2009, as well as attachments one and three to the policy. *Id.*

Mr. Lorentson received a letter from Mr. Francis dated July 8, 2009, asking that the responsive records be e-mailed. CP__; Appendix at 130. Mr. Lorentson e-mailed the responsive records on July 10, 2009, and indicated that Mr. Francis' request was now closed. *Id.*

Mr. Francis did not appeal this decision to the Department. CP__; Appendix at 131.

B. Procedural History

Mr. Francis filed this action on June 30, 2010, alleging that the Department had not provided him with all records responsive to his request.

On July 21, 2010, Mr. Lorentson sent another letter to Mr. Francis informing him that an additional eleven pages of responsive documents had been located. *Id.* These eleven pages consisted of a copy of McNeill Island Corrections Center Operational Memorandum 440.000, Personal Property for Offenders, effective May 10, 2010, as well as attachments to the operational memorandum. *Id.* Mr. Lorentson had initially been informed that McNeill Island Corrections Center did not have responsive documents. *Id.* These records were provided to Mr. Francis at no charge. *Id.* Mr. Lorentson again informed Mr. Francis that his request was now closed. *Id.*

Mr. Francis propounded two sets of discovery on the Department while this case was pending. In response, the Department produced minutes from a tier representative meeting, and an updated Operation Memorandum on September 30, 2010. CP__; Appendix at 131-32. The last of these responsive documents was produced on March 10, 2011. *Id.* Mr. Lorentson indicated that as soon as he discovered any of these

responsive documents, he promptly provided a copy to Mr. Francis. CP __; Appendix at 131.

Mr. Francis filed a motion for Summary Judgment on June 14, 2011. CP __; Appendix at 1-20. The Department responded on July 1, 2011, and Mr. Francis filed a reply on July 14, 2011. *See* CP __; Appendix at 120-128; *see also* CP __; Appendix at 151-160. The trial court heard oral argument on July 15, 2011, and concluded that the Department had violated the PRA by failing to produce all documents responsive to Mr. Francis' request in a timely manner. CP __; Appendix at 177. The trial court then ordered that "the issue of penalties . . . be decided by motion and declarations on September 16, 2011." *Id.*

On July 25, 2011, the inmate PRA penalty statute went into effect. Laws of 2011, ch. 300, §§ 1, 2 (amending RCW 42.56.565). The amended statute directs that "[a] court shall not award penalties under RCW 42.56.550(4) to a person who was serving a criminal sentence in a state, local, or privately operated correctional facility on the date the request for public records was made, unless the court finds that the agency acted in bad faith in denying the person the opportunity to inspect or copy a public record." RCW 42.56.565(1).

On October 12, 2011, the trial court considered penalties. CP __; Appendix at 208-9. In doing so, the court relied on the briefing and

declarations submitted on summary judgment, in addition to the Department's Response to Penalties. CP __; Appendix at 208. The trial court concluded that RCW 42.56.565(1) applied to this action, and that Mr. Francis was an inmate at the time of his request. CP __; Appendix at 208; RP 3. The trial court further found that an inmate plaintiff "has the burden of persuasion to show that the Department acted in bad faith in order to receive penalties." CP __; Appendix at 209; RP 3.

The trial court then applied "the sixteen *Yousoufian* V mitigating and aggravating factors", and concluded that the Department acted in "bad faith" for purposes of the inmate penalty statute. CP __; Appendix at 209; RP 4. Paradoxically, the trial court did not "find any recklessness or intentional noncompliance" on behalf of the Department, and no attempt to "mislead" or "hide information" from Mr. Francis. RP 6-9. The court considered each of the *Yousoufian* factors. RP 4-11. In doing so, the trial court found that the Department's actions supported many of the mitigating factors, including a finding that the Department attempted to respond to Mr. Francis' request in a timely manner, albeit without finding "all of the information that was there to be found." RP 5. The Department, the trial court noted, attempted "to cooperate and keep in contact with [Mr. Francis]" while his request was pending. RP 8. The trial court also determined that the Department's explanation for non-compliance was not unreasonable, and most

importantly, that the Department was not misrepresenting or intentionally hiding documents from Mr. Francis. RP 6. As for the *Yousoufian* aggravating factors, the trial court noted that the Department staff lacked proper training and supervision. RP 5-6. The trial court also found that the time that Mr. Lorentson spent requesting responsive records was insufficient, and therefore, the Department's search was negligent. RP 7. Ultimately, the trial court concluded that the Department's actions did not support any of the six remaining aggravating factors. RP 4-11. Because "enough of [the *Yousoufian*] factors" applied, the trial court held that the Department acted in "bad faith", and therefore, that Mr. Francis was entitled to penalties. RP 9.

With the facts above in mind, the trial court awarded Mr. Francis \$5 per day for the 353 days that the Department violated the Act before he filed suit, and \$10 per day for the 273 days that the Department violated the Act after. CP __; Appendix at 184-85, and 209; RP 9-10. The trial court explained that the penalties were "reflective of this type of case and the effort that was made and the lack of deceit" on the part of the Department. RP 9. The trial court further surmised that "the penalty amount is sufficient to put [the Department] on notice that this kind of delay is not acceptable, and that it will be more than a flea bite on an elephant." *Id.* The court declined to award Mr. Francis costs or attorney fees. CP __; Appendix at

209; RP 11. The trial court entered an order outlining these findings on October 12, 2011. CP __; Appendix at 208-9.

Mr. Francis filed a Notice of Appeal on October 21, 2011, alleging that the trial court erred in the amount of penalties awarded, and in not awarding him costs. The Department filed a Notice of Cross-Appeal on November 14, 2011, assigning error to the trial court's use of the *Yousoufian* V factors to determine "bad faith" for purposes of RCW 42.56.565(1).³

V. ARGUMENT

A. Standards Of Review

This court reviews a challenge to an agency's actions under the PRA *de novo*. *City of Federal Way v. Koenig*, 167 Wn.2d 341, 217 P.3d 1172 (2009); *Mechling v. City of Monroe*, 152 Wn. App. 830, 222 P.3d 808, review denied, 169 Wn.2d 1007, 236 P.3d 206 (2009). Interpretations of law and grants of summary judgment are similarly reviewed *de novo*. *State v. Kintz*, 169 Wn.2d 537, 535, 238 P.3d 470, 474 (2010); *Beal v. City of Seattle*, 150 Wn. App. 865, 872, 209 P.3d 872 (2009) (when record consists only of affidavits, memoranda of law, and

³ Mr. Francis claims the Department's Notice of Cross Appeal was untimely. As explained below in Section F, the Notice was filed within the time provided in RAP 5.2(f) and was therefore timely.

other documentary evidence the appellate court stands in the same position as the lower court).

The “trial court’s determination of appropriate daily penalties [under the PRA] is properly reviewed for an abuse of discretion.” *Yousoufian II*, 152 Wn.2d at 431, 98 P.3d 463 (2004). This Court also reviews a trial court’s decision on fees and costs under this standard. *Kitsap County Prosecuting Attorney’s Guild v. Kitsap County*, 156 Wn. App. 110, 120, 231 P.3d 219 (2010).

B. The Public Records Act

The Public Records Act (PRA) is a strongly-worded mandate for open government so as to provide the public with access to public records. *Burt v. Department of Corrections*, 168 Wn.2d 828, 832, 231 P.3d 191 (2010) (internal citations omitted). “Agencies are required to disclose any public record upon request unless it falls within a specific, enumerated exemption.” *Neighborhood Alliance v. Spokane County*, 172 Wn.2d 702, 714, 261 P.3d 119 (2011); RCW 42.56.070(1). An agency’s search for records must also be reasonably calculated to uncover all relevant documents. *Neighborhood Alliance*, 172 Wn.2d at 720. A search that does not meet this standard constitutes a violation of the PRA, and subjects the agency to daily penalties. *Id.*, at 724. However, an agency is not subject to penalties for a violation if the requestor is an inmate and the

trial court finds that the agency did not act “in bad faith in denying [him] the opportunity to inspect or copy a public record.” RCW 42.56.565(1).

C. The Trial Court Incorrectly Used The Sixteen *Yousoufian* Factors To Determine “Bad Faith” Under RCW 42.56.565(1)

In 2011, the Legislature passed a statute regarding inmate plaintiffs in PRA actions. The law added a new subsection to RCW 42.56.565 that states:

A court shall not award penalties under RCW 42.56.550(4) to a person who was serving a criminal sentence in a state, local, or privately operated correctional facility on the date the request for public records was made, unless the court finds that the agency acted in bad faith in denying the person the opportunity to inspect or copy a public record.

Laws of 2011, ch. 300, § 1 (adding RCW 42.56.565(1)). The Legislature provided further that

[t]his act applies to all actions brought under RCW 42.56.550 in which final judgment has not been entered as of the effective date of this section.

Laws of 2011, ch. 300, § 2 (uncodified note attached to RCW 42.256.565).

This law went into effect on July 25, 2011. *Id.*

Under this statute, an inmate plaintiff has the burden of persuasion to show an agency acted with “bad faith”. The presence or absence of an agency’s “bad faith” is a factor that can determine the *amount* of per-day penalty; but in most public records cases, no showing of “bad faith” is necessary before a penalty is imposed. *Yousoufian V*, 168 Wn.2d at 464.

In contrast, no penalty may be awarded to an inmate plaintiff *unless* the court finds “bad faith” under RCW 42.56.565(1). The finding of “bad faith” under this new statute is a *prerequisite* for the award of *any* penalties to an inmate. *See Yousoufian V*, 168 Wn.2d 444.

The trial court erred by employing the sixteen *Yousoufian* factors to determine whether the Department acted in “bad faith” for purposes of RCW 42.56.565(1). These factors were designed for the sole purpose of determining the *amount* of penalties under the PRA. *Yousoufian V*, 168 Wn.2d at 464.⁴ While a court has yet to specifically define “bad faith” relative to this statute, the *Yousoufian V* factors encompass concepts well beyond the historical definition of “bad faith” in PRA case law, or for that matter, other instructive state law and federal Freedom of Information Act (FOIA) law. As a result, the trial court erred by applying the *Yousoufian* factors to RCW 42.56.565(1).

While the “bad faith” requirement for incarcerated requestors is new, the concept of “bad faith” in withholding responsive records has been discussed. *See Yousoufian v. Office of Ron Sims*, 114 Wn. App. 836, 60 P.3d 667 (2003) (*Yousoufian I*), *aff’d in part and rev’d in part*

⁴ The Court explained that because of the long history of the *Yousoufian* case, “we need to provide additional guidance on the setting of PRA penalty amounts. Hence, this review provides us an appropriate opportunity to set forth relevant factors for trial courts to consider in their penalty determination.” *Yousoufian V*, 114 Wn.2d at 464.

on other grounds, 152 Wn.2d 421, 98 P.3d 463 (2004) (*Yousoufian II*)⁵; *King County v. Sheehan*, 114 Wn. App. 325, 357, 57 P.3d 307 (2002). “Bad faith” exists when an agency knows it has records that should be disclosed, but intentionally fails to disclose them; it is more than negligence, or even “gross negligence”. See *Yousoufian I*, 114 Wn. App. at 853. Even reliance on an invalid basis for nondisclosure will not result in a finding of “bad faith”, so long as the basis is not “so farfetched” or asserted with knowledge of its invalidity, or motivated by a desire to avoid the cost or inconvenience of compliance. See *Sheehan*, 114 Wn. App. at 356-57.

The concept that “bad faith” equates to an intentional, wrongful act is further supported by state cases outside the PRA. For example, one of the four recognized equitable grounds to award attorney fees is bad faith. *Wright v. Dave Johnson Ins. Inc.*, No. 40531–8–II, 2012 WL 1416147 (Wash. Ct. App. Div. II, Feb. 22, 2012). In that context, “substantive bad faith occurs when a party intentionally brings a frivolous claim, counterclaim, or defense with improper motive.” *Rogerson Hiller Corp. v. Port of Port Angeles*, 96 Wn. App. 918, 929, 982 P.2d 131 (1999). Similarly, contesting a will in bad faith has been defined as

⁵ While the *Yousoufian* appellate history is long, culminating in *Yousoufian V*, 168 Wn.2d 444, 229 P.3d 735 (2010), the analysis of “bad faith” in *Yousoufian I* has not been overturned.

“‘actual or constructive fraud’ or ‘prompted [not] by an honest mistake as to one’s rights or duties, but by some interested or sinister motive.’” *In re Estate of Mumby*, 97 Wn. App. 385, 394, 982 P.2d 1219 (1999) (quoting *Bentzen v. Demmons*, 68 Wn. App. 339, 349 n.8, 842 P.2d 1015 (1993)).

Apart from state law, the Federal Freedom of Information Act (FOIA) provides guidance in defining “bad faith” as well as the party burdened with proving it. *See Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 580 P.2d 246 (1978) (Washington’s PRA closely resembles the FIOA, and thus, when appropriate, Washington Courts look to judicial interpretations of the FOIA). Under the FOIA, agency actions are entitled to a presumption of good faith unless overcome by evidence of bad faith. *U.S. Dep’t of State v. Ray*, 502 U.S. 164, 179, 112 S. Ct. 541, 116 L.Ed.2d 526 (1991). In this way, the plaintiff has the burden of proving bad faith and “must point to evidence sufficient to put the [a]gency’s good faith into doubt.” *Ground Saucer Watch, Inc. v. C.I.A.*, 692 F.2d 770, 771 (D.C. Cir. 1981). As for “bad faith” itself, an agency’s delay in the production of documents, even after litigation commenced, “cannot be said to indicate an absence of good faith.” *Goland v. CIA*, 607 F.2d 339, 355 (D.C. Cir. 1978); *see also Minier v. Central Intelligence Agency*, 88 F.3d 796 (9th Cir. 1996) (no bad faith where delay was due to agency’s “first-in, first-out” processing policy for FOIA requests).

Furthermore, “subsequent production cannot serve as proof that the agency conducted an unreasonable search initially or acted in bad faith.” *People for the Ethical Treatment of Animals, Inc. v. Bureau of Indian Affairs*, 800 F. Supp. 2d 173, 179 (D.D.C. 2011).

RCW 42.56.565(1) prohibits an award of penalties to an inmate requester in a PRA action unless the court finds the agency acted in “bad faith” in denying requested records. The statute does not define “bad faith.” But because a finding of “bad faith” is a threshold for awarding *any* penalty, the use of the *Yousoufian* V factors is inappropriate, since their explicit focus is on the *amount* of penalty to be awarded, not the threshold question of whether there can be any penalty at all. Instead, the analysis of bad faith in *Yousoufian* I and *Sheehan* provides a better test for addressing the threshold issue in RCW 42.56.565(1). Only if the inmate plaintiff can demonstrate the agency knows it has records that should be disclosed, and intentionally fails to disclose them, should the court determine that the agency acted in “bad faith”.⁶

⁶ For example, an agency that identified records responsive to an inmate request but refused to produce them without explanation or notice likely would be found to have acted in “bad faith”. But an agency that inadvertently failed to identify some responsive records would not have acted in “bad faith”, even though the failure might constitute a technical violation of the PRA.

D. Even If The Trial Court Properly Determined “Bad Faith”, The Trial Court Did Not Abuse Its Discretion In Awarding Penalties Toward The Bottom Of The Statutory Range

Mr. Francis alleges that the trial court abused its discretion in awarding penalties at \$5 and \$10 per day because the trial court’s findings support some of the *Yousoufian* aggravating factors. Opening Brief at 22-23. This argument, however, fails to take into account both the breadth of the trial court’s discretion in awarding penalties, and the comprehensive approach envisioned by *Yousoufian V*.

“[T]he trial court’s determination of appropriate daily penalties [under the PRA] is properly reviewed for an abuse of discretion.” *Yousoufian II*, 152 Wn.2d at 431, 98 P.3d 463. A trial court abuses its discretion only if its decision is manifestly unreasonable or based on untenable grounds. *Mayer v. Sto Indus., Inc.*, 156 Wn.2d 677, 684, 132 P.3d 115 (2006). A trial court’s decision is “manifestly unreasonable if the court, despite applying the correct legal standard to the supported facts, adopts a view that no reasonable person would take. *Id.*, quoting *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003) (internal quotes and citations omitted). In this way, an appellate court should determine penalties for PRA violations only in exceptional cases. *Yousoufian V*, 168 Wn.2d at 468-69 (setting the penalty amount only because of “the unique

circumstances and procedural history of this case,” while emphasizing that “[i]t is generally not the function of an appellate court to set the penalty”).

A trial court must take only two things into consideration when determining per-day penalties for a violation of the PRA. The first is that any per-day penalty imposed must fall between zero and one hundred dollars. RCW 42.56.550(4); *Yousoufian V*, 168 Wn.2d at 466-67 (a penalty calculation need not begin at the midpoint of the range; trial courts may exercise their “considerable discretion” under the PRA’s penalty provisions in deciding where to begin a penalty determination.). The second consideration is the non-exclusive sixteen-factor *Yousoufian* test. *Id.*

In *Yousoufian V*, the Court outlined both mitigating and aggravating factors for a trial court to consider in determining penalties. *Yousoufian V*, 168 Wn.2d at 467-68. The Court emphasized that these “factors may overlap, are offered only as guidance, may not apply equally or at all in every case, and are not an exclusive list of appropriate considerations.” *Id.* at 468. The Court further cautioned that “no one factor should control.” *Id.*

The parties agree that the trial court considered each applicable *Yousoufian* factor. Instead, Mr. Francis argues that because the trial court found many of the *Yousoufian* aggravating factors it could not award

penalties toward the bottom of the statutory range.⁷ Opening Brief at 22. But the *Yousoufian* factors are not a balancing test where mitigating factors are weighed against aggravating factors to decide which side of some middle value the penalty should fall. See *Yousoufian V*, 168 Wn.2d at 466 (specifically rejecting argument that trial court should begin penalty determinations at midpoint of statutory range). Instead, the factors were intended to encourage a trial court to take a comprehensive approach when determining penalties, to look at an agency's individual actions in the bigger picture, and to weigh each of the factors as the circumstances of the case require.

Here, the trial court took the comprehensive approach envisioned by *Yousoufian V*, and considered all sixteen factors. RP 4-11. In doing so, the trial court reasonably concluded that the facts of this case merited penalties at the bottom of the range, especially since the facts here did not approach the egregiousness of those in *Yousoufian V*. *Id.*

Unlike in *Yousoufian V*, the trial court found the Department's violations were the result of negligence, and not "any recklessness or intentional non-compliance." RP 6-7. The trial court noted that it did not

⁷ Mr. Francis also claims the trial court did not consider "the full per-day penalty scale" when it determined penalties and did not consider deterrence when arriving at penalties. Opening Brief at 10-13, 15-16. Nothing in the record supports these claims. Moreover, the trial court specifically stated that "the penalty amount is sufficient to put [the Department] on notice that this kind of delay is not acceptable, and that it will be more than a flea bite on an elephant." RP 9. His claims are unfounded.

“see any attempt [on the part of the Department] to mislead [Mr. Francis] in the wrong direction, the things you saw in . . . *Yousoufian V.*” RP 9. Even though the Department failed to find some records, the trial court found that the Department “did attempt to respond in a timely manner.” RP 5. The Department’s effort to respond in good faith was further illustrated by the fact that after the Department realized that it had not initially provided all responsive documents, it promptly provided the documents to Mr. Francis at no expense. CP __; Appendix at 131. Further, nothing in the record indicates any attempt by the Department to hide records, to avoid the inconvenience of complying with the PRA, or to disadvantage or inconvenience Mr. Francis as was the case in *Yousoufian V.* With these facts in mind, and in consideration of the *Yousoufian* factors, the trial court acted within its discretion to award penalties toward the bottom of the range.

E. The Trial Court Acted Within Its Discretion In Not Awarding Mr. Francis Costs And Fees

Mr. Francis also claims that the trial court was required to award him costs and attorney fees as a prevailing party in a PRA action. Opening Brief at 26-27. This argument, however, oversimplifies the statute on the award of fees and costs. *See* RCW 42.56.550(4).

This court reviews a trial court's decision on fees and costs in a PRA action for an abuse of discretion. *Kitsap County Prosecuting Attorney's Guild*, 156 Wn. App. 110, 120, 231 P.3d 219 (2010). "A trial court does not abuse its discretion unless the exercise of its discretion is manifestly unreasonable or based upon untenable grounds or reasons." *Progressive Animal Welfare Soc. v. University of Washington*, 114 Wn.2d 677, 689, 790 P.2d 604 (1990), citing *Allard v. First Interstate Bank*, 112 Wn.2d 145, 148, 768 P.2d 998, 999 (1989).

"Any person who prevails against an agency in [a PRA action] shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action". RCW 42.56.550(4); *Neighborhood Alliance*, 172 Wn.2d at 726. But this Court has found no abuse of discretion where a trial court restricted an inmate's recovery of costs to clerk's fees and postage due to the inmate's use of the "PRA as a vehicle of personal profit through false, inaccurate, [and] inflated costs." *Mitchell v. Washington State Institute of Public Policy*, 153 Wn. App. 803, 830, 225 P.3d 280 (2009). Additionally, *pro se* litigants are generally not entitled to attorney fees when representing themselves. *In re Marriage of Brown*, 159 Wn. App. 931, 939–39, 247 P.3d 466 (2011). As this Court recently explained, "the plain language of RCW 42.56.550(4) . . . awards 'reasonable attorney fees,' not fees in lieu of attorney fees to non-attorneys

who represent themselves in PRA actions.” *West v. Thurston County*, No. 41085–1–II, 2012 WL 1604838 at *15, ¶ 62 (Wash. Ct. App. Div. II, May 8, 2012).

Mr. Francis is not an attorney and has “neither earned attorney fees nor is entitled to such an award under the PRA.” *Id.* at *16, ¶ 63. Here, the trial court properly declined to grant Mr. Francis any costs or attorneys fees. RP 11. Mr. Francis was acting *pro se*, and therefore not entitled to attorney’s fees, statutory or otherwise.

As for other costs, Mr. Francis did not provide the trial court with a basis to award costs: he provided no invoices or declarations in support of his request. *See* CP __; Appendix at 22-119. As such, the trial court was without the means to award costs, and therefore acted within its discretion by denying them.

Mr. Francis similarly asks this Court to award him costs on appeal for “paralegal services”. Opening Brief at 28-30. For the same reason he is not entitled to attorney fees in the trial court, Mr. Francis is not entitled to paralegal costs on appeal.

This Court should reject Mr. Francis’ argument that he is entitled “paralegal” fees. Mr. Francis has offered no evidence of that any paralegal services performed on his behalf were supervised by an attorney. *See Absher Const. Co. v. Kent School District No. 415*, 79 Wn. App. 841,

845, 917 P.2d 1086 (1995) (in order to consider reimbursement of nonlawyer services, a court must find six factors, including that the performance of such services was supervised by an attorney, and that the person providing the work is qualified by virtue of education, training, or work experience to perform such work.). Moreover, Mr. Francis' reliance on federal civil rights cases is unavailing. In *Missouri v. Jenkins*, 491 U.S. 274, 285, 109 S. Ct. 2463, 105 L. Ed. 2d 229 (1989), the Supreme Court held that only for purposes of 42 U.S.C. § 1988, the statutory phrase "reasonable attorney's fee" must be understood to include the attorney's expense for "secretaries, messengers, librarians, janitors, and others *whose labor contributes to the work product for which an attorney bills her client*; and it must also take account of other expenses and profit." *Id.* (emphasis added). In *Perez v. Cate*, 632 F.3d 553 (9th Cir. 2011), the *attorneys* representing prisoners in class action litigation sought attorney fees for paralegal services; the legal issue was the reasonable hourly rate for paralegal services, not whether a *pro se* party could obtain paralegal costs independent of legal representation. Neither federal case supports Mr. Francis' claim for attorney fees for his *pro se* representation, especially in light of controlling state law.

F. The Department Filed A Timely Notice Of Cross-Appeal

Finally, Mr. Francis alleges that the Department filed an untimely notice of cross-appeal. Opening Brief at 31-32; RAP 5.2. He is incorrect.

RAP 5.2(f) states that “[i]f a timely notice of appeal . . . is filed by a party, any other party who wants relief from the decision must file a notice of appeal . . . within the later of (1) 14 days after service of the notice filed by the other party, or (2) the time within which notice must be given as provided in sections (a), (b), (d) or (e).” *See also National Christian Assoc. v. Simpson*, 21 Wash. 16, 56 P. 844 (1899). The day the decision or judgment is filed is not included in this computation. RAP 18.6. The last day of the computation period is included, unless it is a weekend or legal holiday. *Id.* Veteran’s Day, November 11, is a legal holiday. RCW 1.16.050.

The trial court entered a final order in this case on October 12, 2011. *See* CP __; Appendix at 208-9. The thirty-day period to file a notice of appeal began to run on the following day, October 13, 2011, and ended on Saturday, November 12, 2011. The Department filed a Notice of Cross-Appeal on November 14, 2011, the first business day following Saturday, November 12, 2011.⁸ The Department’s Notice of Cross-

⁸ Even if the thirty day period had begun to run on October 12, the last day to file an appeal would be Friday, November 11, 2011, a legal holiday, allowing timely filing on November 14, 2011.

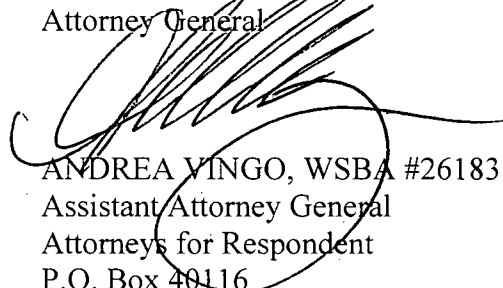
Appeal was therefore timely filed, making Mr. Francis' claim without merit.

VI. CONCLUSION

For the reasons set forth above, the Department respectfully asks that this Court hold that the trial court applied an incorrect legal test in determining "bad faith" under RCW 42.56.565(1). This Court should hold that a finding of "bad faith" under RCW 42.56.565(1) is appropriate only if an inmate plaintiff can demonstrate both that the agency knows it has responsive records that should be disclosed, and intentionally fails to disclose them. With this proper legal standard in mind, this Court should reverse the trial court and remand for a redetermination as to whether the Department acted in "bad faith" under RCW 42.56.565(1), or in the alternative, hold that the Department did not act in "bad faith".

RESPECTFULLY SUBMITTED this 21st day of May, 2012.

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CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of BRIEF OF
RESPONDENT on all parties or their counsel of record on the date below
as follows:

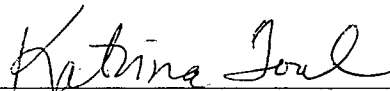
X U.S. Mail, Postage Prepaid
United Parcel Service, Next Day Air
ABC/Legal Messenger
State Campus Delivery
Hand Delivered by: _____
Facsimile

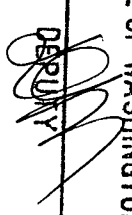
TO:

SHAWN D. FRANCIS #749717
STAFFORD CREEK CORRECTIONS CENTER
191 CONSTANTINE WAY
ABERDEEN WA 98520

I certify under penalty of perjury of the laws of the State of
Washington that the foregoing is true and correct.

EXECUTED this 21st day of May, 2012, at Olympia, Washington.


KATRINAL TOAL
Legal Assistant

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COURT OF APPEALS
DIVISION II
2012 MAY 22 AM 11:04
STATE OF WASHINGTON
BY  DEPUTY

RECEIVED

JUN 16 2011

ATTORNEY GENERAL'S OFFICE
CORRECTIONS DIVISION

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

SHAWN D. FRANCIS,
Plaintiff,

v.

DEPARTMENT OF CORRECTIONS,
Defendant.

NO. 10-2-10630-3

PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT AND MEMORANDUM AND
POINTS OF AUTHORITY IN
SUPPORT THEREOF

I. INTRODUCTION

Plaintiff, Shawn D. Francis, respectfully moves this Court for an order of summary judgment pursuant to CR 56(a), on the issues of liability and penalties presented herein. This motion for summary judgment is to predetermine liability; to determine the number of individual groups of documents requested by the Plaintiff which the Defendant is separately liable for; and finally, to determine penalties.

II. EVIDENCE RELIED UPON

Included with this motion as Attachment A is the First Declaration of Shawn D. Francis, along with exhibits.

III. STATEMENT OF FACTS

The facts of this case are very clear. Mr. Francis submitted a request under the Public Records Act to the

PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT - 1

APPENDIX 000001

COPY

Department of Corrections - Public Disclosure Unit, dated June 19, 2009. In this letter, Mr. Francis requested the following specific documents:

"Any and all documents related to any reason and/or justification for the reason why inmates at the McNeil Island Corrections Center are not allowed to retain fans and hot pots in their cells, as well as any policy that may be in place to substantiate such restrictions on these items also."

First Decl. of Francis, Exhibit A.

It is undoubtedly clear that Mr. Francis made three separate records requests: 1) documents relating to why inmates couldn't retain fans in their cells; 2) why inmates couldn't retain hot pots in their cells; and 3) the policies specifically listing these items as being restricted.

This request was received by the Department of Corrections on June 22, 2009, and was assigned public disclosure tracking number #PDA-7430. Public Disclosure Specialist, Brett W. Lorentson, responded to Mr. Francis' request on behalf of the Department of Corrections ("DOC") by letter, dated July 1, 2009. First Decl. of Francis, Exhibit B.

In a letter to Mr. Francis, dated July 2, 2009, Mr. Lorentson stated that he had gathered a total of 15 pages of documents that were responsive to Mr. Francis' June 22, 2009 records request. First Decl. of Francis, Exhibit C.

Mr. Francis then sent a letter to Mr. Lorentson,

dated July 8, 2009, requesting that he email the 15 pages of responsive documents to the email address provided. First Decl. of Francis, Exhibit D.

In an email to Mr. Francis, dated July 10, 2009, Mr. Lorentson sent the 15 pages of responsive documents to the email address provided by Mr. Francis. First Decl. of Francis, Exhibit E, bates numbers E-1 through E-16. These documents relate to the agency's policy which govern personal property for offenders. These documents provide that fans and hot pots are allowed for inmate retention. First Decl. of Francis, Exhibits E-15 & E-16. These documents are non-responsive as they do not "substantiate such restrictions on these items...". Nowhere in these documents is there any reason provided as to why inmates at the McNeil Island Corrections Center ("MICC") aren't allowed to retain fans and hot pots in their cells.

During the month of November, 2009, a fellow inmate showed Mr. Francis documents describing why inmates at MICC weren't allowed to retain fans and hot pots in their cells. First Decl. of Francis, pg. 3, ¶10. Mr. Francis timely filed his complaint on June 28, 2010, within one year from the date of the last correspondence with DOC.

Nearly one month after Mr. Francis filed his complaint in this matter, he received a letter from

Mr. Lorentson, dated July 21, 2010, which contained MICC Operational Memorandum #MICC 440.000, which had a revision date of "5/10/2010". First Decl. of Francis, Exhibit F, bates numbers F-1 through F-12. These documents were also non-responsive as they do not fall within the date parameters of Mr. Francis's request. Furthermore, Mr. Francis submitted his records request on June 19, 2009, nearly one year prior to the existence and implementation of these documents, thus making these documents incapable of being responsive.

On August 31, 2010, DOC responded to interrogatories and requests for documents submitted by Mr. Francis. First Decl. of Francis, Exhibit G, bates numbers G-1 through G-37.¹ Provided within DOC's response were the following documents:

- 1) "MCNEIL ISLAND CORRECTIONS CENTER TIER REP AGENDA ITEMS", dated June 06, 2008. First Decl. of Francis, Exhibits G-18 through G-27; and
- 2) "QUARTERLY TIER REPRESENTATIVE MEETING MINUTES", dated November 16, 2007. First Decl. of Francis, Exhibits G-28 through G-37.

DOC did not provide these documents to Mr. Francis upon his initial records request, nor were they provided to him prior to the filing of this lawsuit. First Decl. of Francis, pg. 5, ¶14. These responsive documents were provided to Mr. Francis 437 days after his June 22, 2009

¹ Only 21 of the 85 documents produced by defendant have been attached to this exhibit, as they are the documents relevant to these claims.

records request. In DOC's response to Interrogatories No. 17 & 18, they responded as follows:

"The document in question appears to be responsive to Plaintiff's June 22, 2009 public records request. (Emphasis added)

First Decl. of Francis, Exhibit G-12 & G-13.

On September 21, 2010, Mr. Francis sent to the counsel of record for the Department of Corrections in this matter, Assistant Attorney General, Andrea Vingo, a letter informing her that her client had still not provided him with the proper MICC Operational Memorandum, #MICC 440.000 which had been revised and in effect at the time of his records request. First Decl. of Francis, pg. 5, ¶15.

After waiting approximately 4 months for DOC to respond to his September 21, 2010 letter, Mr. Francis propounded his second set of discovery requests upon the Department of Corrections.

On February 28, 2011, over 5 months after Mr. Francis informed DOC that documents still existed which had not been provided, DOC responded to Mr. Francis' second set of interrogatories and requests for documents, finally producing the last set of documents responsive to his June 22, 2009 records request. First Decl. of Francis, Exhibit H, bates numbers H-1 through H-14. The documents

provided with this response was the MICC Operational Memorandum #MICC 440.000, with the proper revision date of "3/1/09". These documents were provided to Mr. Francis 615 days after his June 22, 2009 records request. In DOC's response to Mr. Francis' second set of interrogatories, in Interrogatory No. 2, they responded as follows:

"The document in question appears to be responsive to Plaintiff's June 22, 2009 public records request." (Emphasis added)

First Decl. of Francis, Exhibit H-2.

IV. ARGUMENT

A. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when the pleadings, affidavits, interrogatories, depositions, and exhibits show there are no genuine issues of material fact, and the moving party is entitled to judgment on the issues presented as a matter of law. Havens v. C&D Plastics, Inc., 124 Wn.2d 158, 177, 876 P.2d 435 (1994). When reasonable minds could reach but one conclusion regarding the claims of disputed facts, such questions may be determined as a matter of law. Corbally v. Kennewick School Dist., 94 Wn.App. 736, 740, 937 P.2d 1074 (1999). DOC has conceded that responsive documents were withheld from Mr. Francis.

First Decl. of Francis, Exhibits G-12 & G-13 (Interrogatory No. 17 & 18); also Exhibit H-2 (Interrogatory No. 2).

Therefore summary judgment is appropriate and Mr. Francis is entitled to judgment on the issues as a matter of law.

B. THE PUBLIC RECORDS ACT LAW

The Public Records Act ("PRA") requires a timely production of agency records. RCW 42.56.520. In the PRA, agencies are defined in two categories, local and state. The state agency category categorically includes, "...every state office, department, division, bureau, board, commission, or other state agency." RCW 42.56.010(1). Public records are defined as "any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency, regardless of physical form or characteristics. RCW 42.56.010(2). These type of records include those requested by Mr. Francis as they are related to these functions. "Once documents are determined to be within the scope of the PRA, disclosure is required unless specific statutory exemption is applicable." Newman v. King County, 133 Wn.2d 571, 947 P.2d 712 (citing Dawson v. Daly, 120 Wn.2d 782, 789, 845 P.2d 995 (1993)).

Mr. Francis made a lawful request for public records to a state agency, the Department of Corrections ("DOC"). No exemptions were claimed by DOC, and therefore are not being challenged.

C. DOC IS LIABLE FOR FAILING TO PROVIDE THE REQUESTED RECORDS TO MR. FRANCIS BEFORE HE FILED THIS LAWSUIT.

In response to Mr. Francis' June 22, 2009 records request, Mr. Lorentson provided Mr. Francis with DOC's agency policy, "DOC 440.000". First Decl. of Francis, Exhibit E-1. This document is a blanket policy which defines the maximum "allowable" personal property that an inmate is allowed to retain. Furthermore, this agency policy states that inmates at men's facilities are allowed to retain one fan and one hot pot at minimum and medium custody facilities. Prior to the recent closure of the McNeil Island facility, and at the time of Mr. Francis' records request, MICC was established as a minimum/medium custody facility. First Decl. of Francis, Exhibit E-15 & E-16. Nothing in Mr. Lorentson's July 10, 2009 response produced any records to specifically address Mr. Francis' request as to the reasons or ideas behind the restrictions of fans and hot pots at MICC, nor did he provide any

policy listing these as restricted items.

On July 10, 2009, Mr. Lorentson then closed Mr. Francis' request unfulfilled. First Decl. of Francis, Exhibit E-1.

1. DOC Is Liable Because It Negligantly Closed Mr. Francis' Request Unfulfilled Requiring Him To Propound Formal Discovery To Obtain Full Disclosure.

On July 28, 2010, after filing the lawsuit in this matter, Mr. Francis served upon the defendant, Plaintiff's First Set of Interrogatories and Requests for Production of Documents. On August 31, 2010, DOC responded to Mr. Francis' first set of discovery requests, producing 85 total documents in response. First Decl. of Francis, pg. 5, ¶14; Exhibits G-1 through G-37. Within these discovery requests, namely Interrogatories and Requests for Production numbers 15 & 16, Mr. Francis specifically asked DOC to produce the following documents:

- 1) MICC Tier Rep Agenda Items and Response Minutes, dated June 6, 2008; and
- 2) MICC Quarterly Tier Representative Meeting Minutes, dated November 16, 2007.

First Decl. of Francis, Exhibits G-11 & G-12.

In DOC's response, they provided these documents to Mr. Francis. First Decl. of Francis, Exhibits G-18 through G-27; and also G-28 through G-37. Furthermore, in DOC's response to Interrogatories 17 & 18, DOC concedes that both sets of requested records are responsive to Mr. Francis' June 22, 2009 records request. First Decl. of Francis, Exhibits G-12 & G-13.

After receiving DOC's response to these first set of discovery requests, Mr. Francis believed that more documents had still not been provided to him. Mr. Francis notified DOC, through a letter to their attorney, that there were still responsive documents which they had not provided. First Decl. of Francis, pg. 5, ¶15. After waiting for approximately 4 months for DOC to comply, Mr. Francis was required to propound a second set of formal discovery requests to DOC.

On February 28, 2011, DOC responded to these second discovery requests, and finally produced the proper policy in effect at the time of Mr. Francis' June 22, 2009 records request. First Decl. of Francis, Exhibits H-1 through H-14.

It is clear that both of Mr. Francis' formal discovery requests were necessary to prompt DOC to re-open twice and fully respond to his PRA request.

2. Doc Is Liable Because It Failed To
Provide Mr. Francis The "Fullest
Assistance" On His Request, In
Violation of RCW 42.56.080;
42.56.100; and 42.56.520.

The PRA requires agencies to provide requestors with the "fullest assistance" in the "most timely possible action". RCW 42.56.100. The request made by Mr. Francis was referred to Mr. Lorentson on June 24, 2009. On or abouts June 29, 2009, Mr. Lorentson referred it to the Public Disclosure Secretary for the McNeil Island Corrections Center, Tammie Stark. Soon thereafter, a "Public Disclosure Routing Slip" was signed by Tammie Stark claiming that she had conducted a "thorough" staff search, and did not have any responsive documents in regards to Mr. Francis' request. First Decl. of Francis, Exhibit G-17. However, despite claiming that a "thorough" search had been conducted, the Public Disclosure Routing Slip shows that, at most, only "15" minutes were spent by staff searching for responsive documents. Furthermore, none of the common records locations were searched according to the Routing Slip. First Decl. of Francis, Exhibit G-17.

In summary, DOC spent less than 15 minutes searching for documents responsive to Mr. Francis' request,

and furthermore, failed to search any of the locations where records were commonly retained. Failing to spend even the minimal amount of time that it would take to search locations where records were commonly retained, not only shows a lack of reasonableness pertaining to the adequacy of the search, but it also fails to show that DOC even attempted to make a good faith effort to uncover any relevant documents in order to produce the information requested.

D. MR. FRANCIS IS ENTITLED TO PENALTIES FOR DOC'S VIOLATION OF THE PUBLIC RECORDS ACT.

1. This Court Must Group Mr. Francis' Requests Into Three Separate Groups Based Upon The Records Requested.

Penalties are mandatory for any violation of the Public Records Act. Yousoufian v. Office of King County Executive, 152 Wn.2d 421, 433, 98 P.3d 463 (2004). Under Yousoufian, id., and the PRA, it is within the discretion of the trial court to award penalties no less than \$5 dollars per day, not to exceed \$100 per day for each day that the requestor was denied the right to inspect or copy said public record. RCW 42.56.550(4). It has been further established that encompassed within this discretion lies

the trial court's authority to arrange the withheld records into groups based on certain factors. Id.

In Yousoufian, id., the requestor made two separate records requests, between two separate dates. It was concluded through the course of trial that a total of 228 single page documents were wrongfully withheld. Id., at 427. Yousoufian argued that the per day penalty should apply to each individual page that was wrongfully withheld. In executing its statutorily imposed discretion, the trial court refused to award penalties on a per page basis, instead arranging the withheld records into individual groups, based on two criteria: 1) the dates the records were produced to the requestor; and 2) the subject matter. Id., at 427. Although the requestor made only two separate requests, the trial court concluded that between the two requests existed a total of 10 separate groupings of documents that were wrongfully withheld.¹ Id., at 427.

In assessing the total penalty, the trial court calculated the total number of days that each group of records were withheld. Next, the court added the penalty days of each group together. Lastly, the court multiplied

¹ It should be noted that the requestor in Yousoufian, id., did not itemize or number each of the requested groups of records, the request was simply formatted within a single paragraph or two.

this figure by the per day penalty amount to finally arrive at the total award in statutory penalties.

Id., at 428, n.6.

Although Yousoufian continued litigation for a many number of years on the issue of what constituted a proper per day penalty, the issue of "grouping" was resolved in this 2004 case, Yousoufian, id., and was not challenged any further.

In examining the handling of each request, and also applying the standard upon which the trial court in Yousoufian relied, and upon which the Appellate Courts agreed, it is clear that Mr. Francis' June 22, 2009 public records request encompassed three separate groupings of requested records:

Group #1: Documents relating to why inmates couldn't retain "fans" in their cells;

Group #2: Documents relating to why inmates couldn't retain "hot pots" in their cells; and

Group #3: Policies stating such restrictions.

Although the first two groupings were produced to Mr. Francis on the same date, they involved separate subject matter. The third and last grouping was provided to Mr. Francis at a much later date than the first two groupings, and involved separate subject matter.

Based on these factors and considerations affirmed by the Courts in Yousoufian, id., this Court must find that, although Mr. Francis was provided a total of 30 pages that were wrongfully withheld, his June 22, 2009 records request encompassed 3 separate groups of records that were wrongfully withheld, and apply the Court's determination of the per day penalty to each aforementioned group.

2. This Court Must Determine and Apply A Separate Penalty Amount To Each Grouping.

An equally important effect on the determination of grouping of the requests is the impact of the potential penalty for each group of records requested. The only similarity in DOC's handling was that the first two groups of requests were responded to on the same day, August 31, 2010. Every other aspect is different.

In determining penalties, this Court must examine the handling of each request using the new framework for evaluating penalties set forth in the March 25, 2010 decision in Yousoufian. Yousoufian v. Office of Ron Sims, 168 Wn.2d 444, 229 P.3d 735 (2010). In this new framework, the trial court must consider mitigating and aggravating factors.

The suggested mitigating factors are:

(1) a lack of clarity in the PRA request, (2) the agency's prompt response or legitimate follow-up inquiry for clarification, (3) the agency's good faith, honest, timely, and strict compliance with all PRA procedural requirements and expectations, (4) proper training and supervision of the agency's personnel, (5) the reasonableness of any explanation for noncompliance by the agency, (6) the helpfulness of the agency to the requestor, and (7) the existence of agency systems to track and retrieve public records.

The suggested aggravating factors are:

(1) a delayed response by the agency, especially in circumstances making time of the essence, (2) lack of strict compliance by the agency with all the PRA procedural requirements and exceptions, (3) lack of proper training and supervision of the agency's personnel, (4) unreasonableness of any explanation for noncompliance by the agency, (5) negligent, reckless, wanton, bad faith, or intentional noncompliance with the PRA by the agency, (6) agency dishonesty, (7) the public importance of the issue to which the request is related, where the importance was foreseeable to the agency, (8) any actual or personal economic loss to the requestor resulting from the agency's misconduct, where the loss was foreseeable to the agency, and (9) a penalty amount necessary to deter future misconduct by the agency considering the size of the agency and the facts of the case.

In light of these factors, the only mitigating factors which are possibly relevant is that DOC did promptly respond. Wrongfully, of course, but promptly. DOC also does track records.

As for aggravating factors, DOC was at the very least grossly negligent nearly every step of the way in handling

Mr. Francis' request, especially when closing his request without conducting a proper search.

The clarity of Mr. Francis' request is not at issue. Mr. Francis was very specific as to the records he was requesting, and what those records pertained to.

The fact that staff spent less than 15 minutes to address Mr. Francis' request, and furthermore, failed to even conduct a search in common locations where records were retained, evinces that staff have not been properly trained in methods which can be reasonably expected to produce requested records. This also suggests a complete lack of regard to the strict requirements of the PRA. This search was clearly not adequate by any standards.

As for economic loss, Mr. Francis used his own funds to purchase a fan and hot pot, which were sold to him by DOC. These were items that were, not only allowed under DOC policy, but were purchased by Mr. Francis to perform a specific function. Because he was not allowed to have these items, he had planned to seek legal remedy for recissory damages due to the pecuniary loss of the use-value of these items, and made his records request to gather documentation to support his claim. First Decl. of Francis, pg. 2, ¶4. Mr. Francis did suffer an actual economic loss.

When considering all of the above-mentioned aggravating factors, and lack of mitigating factors, it is easy to determine that DOC could have fully responded to Mr. Francis' request had it simply made an effort to locate responsive documents.

Based upon all of the aforementioned factors, and the necessity to penalize DOC to ensure proper regard for the PRA in the future, Mr. Francis asks that a penalty of \$45 per day be applied to Group #1 of Mr. Francis' request, and that \$45 per day also be applied to Group #2 of his request.

The third group of documents, the MICC policy records, require a different penalty calculus. Not only do the aforementioned aggravating factors, and lack of mitigating factors apply, further consideration must be taken into account when determining penalties for this third group of requested records. The penalties must also be based upon the actions of DOC.

These actions include one aggravating factor after another: delayed response, lack of strict compliance, no explanation, lack of proper training, and intentional noncompliance. Mr. Francis, in good faith, informed DOC that these documents existed and still had not been produced. Once again, DOC did not respond, and after waiting

approximately 4 months, Mr. Francis was, for a second time, forced to propound a second set of discovery requests upon DOC in order to obtain the last group of documents. DOC finally provided the documents in Group #3 on February 28, 2011.

The actions of DOC are not only further indicative of their willful refusal to comply with the PRA, but are also further indicative of the necessity to set a penalty to deter such flagrant disregard for the PRA in the future. Consequently, Mr. Francis asks that a penalty of \$80 per day be applied to Group #3 of the records that Mr. Francis requested.

These three groups are markedly different, both in subject matter and how they were handled. This Court should order that the Department of Corrections be liable for 437 penalty days for Groups #1 & #2, for a total of 874 penalty days. These groups should have penalties attached of \$45 per day, for a total of \$39,330. This Court should further order that the Department of Corrections be liable for 615 penalty days for Group #3, and should attach penalties of \$80 per day, for a total of \$49,200. This requires a total penalty of \$88,530.00.

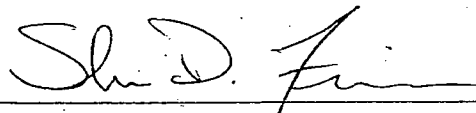
E. MR. FRANCIS IS ENTITLED TO ALL COSTS.

The award of all costs, in accordance with RCW 42.56.550(4), are mandatory. Amren v. City of Kalama, 131 Wn.2d 25, 32, 929 P.2d 389 (1997). Mr. Francis, as the prevailing party is entitled to all costs incurred with this matter.

V. CONCLUSION

For the reasons stated herein, Plaintiff asks this Court to find that the Defendant, Department of Corrections is liable for three separate violations of the Public Records Act. Plaintiff further asks this Court to impose penalties in the total amount of \$88,530.00. Lastly, Plaintiff asks this Court to order the Defendant to pay all costs that Plaintiff has incurred in this matter.

DATED this 7th day of June, 2011.



Shawn D. Francis
Plaintiff, Pro se
DOC #749717
Airway Heights Corrections Center
PO Box 2049; Unit: L-A-28-L
W. 11919 Sprague
Airway Heights, WA 99001
Tel: (509) 244-6700
Fax: N/A

ATTACHMENT - A

(
(First Declaration of Shawn D. Francis)
Pierce County Superior Ct. No. 10-2-10630-3

SHAWN D. FRANCIS,)
Plaintiff,)
) NO. 10-2-10630-3
v.)
) FIRST DECLARATION OF
DEPARTMENT OF CORRECTIONS,)
Defendant.)
) SHAWN D. FRANCIS
)

I, Shawn D. Francis, hereby declare:

2. I am the Plaintiff in the above-referenced case, and the attached documents, labeled as Exhibits A through H, are true and correct copies.

FIRST DECLARATION OF SHAWN D. FRANCIS - 1

by the MICC staff that, according to their policies, I would not be allowed to have my hot pot or my fan. I was told that I could send it out at my own expense, or that I could put it in storage and could get these items back upon release from MICC. I chose to have my hot pot and fan placed in storage. I asked the MICC staff member who informed me of this policy if I could view the policy. I was simply told "no", and that I could find a copy for viewing in the facility's legal library. I was unable to locate any such policy in the facility legal library that prohibited inmates from retaining fans and hot pots in their cells.

4. I was sold a hot pot and fan by the Department of Corrections ("DOC"), and purchased these items with my own monies. Because I was not allowed to have these items after being sold these items, against DOC policy, I decided to seek legal remedy for recissory damages due to the pecuniary loss of the use-value of these items. Prior to filing any legal claims for the wrongful taking of my property, I chose to make a records request to gather documentation to support any such claims. As an incarcerated individual, the only avenue I had available in order to obtain such documentation was to use the Public Records Act ("PRA") as a discovery tool.

5. On June 19, 2009, I mailed to the Department of Corrections - Public Disclosure Unit a request for public records asking for three (3) separate groupings of records. I asked for: 1) records justifying the prohibition of inmate fans at MICC; 2) records justifying the prohibition of inmate hot pots at MICC; and 3) current policies that supported these justifications. See Exhibit - A.

6. My June 22, 2009 records request was received by Brett W. Lorentson ("Mr. Lorentson"), a Public Disclosure Specialist with DOC, and was assigned public disclosure tracking number "PDU-7430". See Exhibit - B.

7. I received a letter from Mr. Lorentson, dated July 2, 2009, in which Mr. Lorentson stated that he had gathered a total of 15 pages of documents that were responsive to my records request. See Exhibit - C.

8. I then sent Mr. Lorentson a letter requesting that he email the 15 pages of responsive documents to an email address provided in that letter. See Exhibit - D.

9. On or abouts July 15, 2009, I received the 15 pages of responsive documents that Mr. Lorentson emailed to the email address I provide him. See Exhibit - E.

10. At the time of my records request, I was elected as an inmate representative at MICC. Sometime, in the month of November, 2009, another elected inmate representative

let me, examine only, documents from previous inmate representative meetings, in which the prohibition of fans and hot pots at MICC were specifically addressed by the MICC administration staff. After I had examined these documents, I realized that they were responsive to my June 22, 2009 records request, and were wrongfully withheld from me by DOC.

11. On June 28, 2010, I filed a Summons and Complaint, along with the filing fee, with the Pierce County Superior Court, for DOC's violation of the PRA in this matter.

12. After I filed the Summons and Complaint in this matter, Mr. Lorentson then sent me a letter, dated July 21, 2010, which contained MICC Operational Memorandum #MICC 440.000, regarding personal property for offenders, which had a revision date of "5/10/2010". These documents came into effect nearly 1 year after my records request, thereby making it impossible to suggest that these were the documents applicable to my records request made nearly one year prior to the existence of these documents. See Exhibit - F.

13. On July 28, 2010, I propounded Plaintiff's First Set of Interrogatories and Requests for Production of Documents on the Department of Corrections.

14. On August 31, 2010, DOC responded to my first set of discovery requests, producing 85 documents in total. See Exhibit - G.¹ For the first time, DOC provided me with the "MCNEIL ISLAND CORRECTIONS CENTER TIER REP AGENDA ITEMS" dated June 06, 2008. See Exhibits G-18 through G-37. Also, for the first time, I was provided the "QUARTERLY TIER REPRESENTATIVE MEETING MINUTES" dated November 16, 2007. See Exhibits G-28 through G-37.

15. On September 21, 2010, I sent a letter to Assistant Attorney General, Andrea Vingo, Attorney for the Department of Corrections in this matter. In this letter I informed Ms. Vingo that her client had still not provided me with the proper MICC Operational Memorandum (Policy) #MICC 440.000 that had been revised and in effect at the time of my records request.

16. After waiting approximately 4 months for DOC to provide me with the proper records, I decided to propound my second set of discovery requests upon the Department of Corrections.


17. On February 28, 2011, over 5 months after informing them that the proper MICC policy had still not been provided to me, DOC responded to my second set of

¹ Only 21 of 85 documents produced by the defendant have been attached to this exhibit.

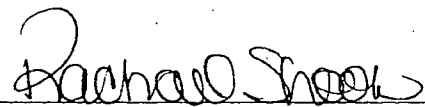
discovery requests, providing me for the first time with the MICC Operational Memorandum #MICC 440.000, with the responsive revision date of "3/1/09". See Exhibit - H.

16. This is my first declaration in this matter.

DATED this 23rd day of May, 2011.


Shawn D. Francis

SUBSCRIBED AND SWORN to before me this 23rd day
of May, 2011.


NOTARY PUBLIC, in and for the
State of Washington, residing
at:

Spokane

My Commission Expires:

4/30/12

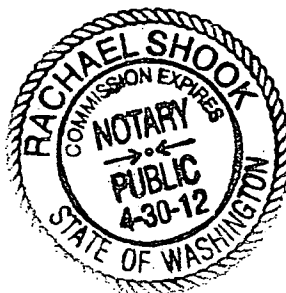


EXHIBIT A

June 19, 2009

RECEIVED

JUN 24 2009

PUBLIC DISCLOSURE UNIT

Department of Corrections
Public Disclosure Unit

PO BOX 41118

Olympia, WA 98504-1118

Re: Public Records Request Pursuant to RCW 42.56 et seq.

Dear Public Records Officer:

This is a public records disclosure request pursuant to RCW 42.56 et seq. Pursuant to RCW 42.56, 520, I am requesting a response and/or production of the records listed below within five (5) business days of your receipt of this letter. The requested records can be provided to me at the address below. If there is a fee for the cost of copying the requested records, please let me know as soon as possible so that I can remit payment.

I am requesting the following records:

Any and all documents related to any reason and/or justification for the reason why inmates at the McNeil Island Corrections Center are not allowed to retain fans and hot pots in their cells, as well as any policy that may be in place to substantiate such restrictions on these items also.

Thank you for your timely response. I look forward to hearing from you.

Sincerely,



Shaun Francis

Shaun Francis

Doc # 7149717

Medel Island Corrections Center

P.O. Box 881000, Unit: A-422-1

Steilacoom, WA 98388

EXHIBIT B



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
P.O. Box 41100 • Olympia, Washington 98504-1100

July 1, 2009

Shawn Francis, DOC 749717
A4221
MICC
PO Box 881000
Steilacoom WA 98388

Dear Mr. Francis:

I am in receipt of your public disclosure request received June 22, 2009. You have requested any and all documents related to any reason and/ or justification for the reason why inmates at MICC are not allowed to retain fans and hot pots in their cells, as well as any policy that may be in place to substantiate such restrictions on these items. For your future reference, this request has been assigned public disclosure tracking number, PDU-7430.

I will proceed to identify and gather responsive records according to my interpretation of your request. If my interpretation of your request is incorrect in any way, please forward clarification.

You can expect further response in 20 days, on or before July 30, 2009. If you have any questions in the interim, please feel free to contact me at the address below.

Sincerely,

A handwritten signature in cursive script, reading "Brett W. Lorentson".

Brett W. Lorentson, Public Disclosure Specialist
Department of Corrections
PO Box 41118
Olympia WA 98504

BL:PDU-7430

cc: File

"Working Together for SAFE Communities"



APPENDIX 000032

Francis v. DOC
DEFS-000005

B-1

EXHIBIT C



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
P.O. Box 41100 • Olympia, Washington 98504-1100

July 2, 2009

Shawn Francis, DOC 749717
A4221
MICC
PO Box 881000
Steilacoom WA 98388

Dear Mr. Francis:

According to my interpretation of your request (PDU-7430), I have identified and gathered 15 pages responsive to your request. You have requested any and all documents related to any reason and/ or justification for the reason why inmates at MICC are not allowed to retain fans and hot pots in their cells, as well as any policy that may be in place to substantiate such restrictions on these items. Total fees related to your request are:

Copy fee (15 x \$.20 per page)	\$3.00
Postage	\$1.22
TOTAL	\$4.22

Upon receipt of payment in the form of check or money order made payable to the Department of Corrections in the amount of \$4.22, I will mail the requested documents to you. Please send your payment to my attention at the address below and include the PDU number assigned to this request (PDU-7430).

Please note that all records sent to incarcerated inmates are subject to Department mailroom policy guidelines. Your payment for copies of records requested under the Public Records Act does not ensure that these same records will be allowed into a secure prison facility (Livingston v. Cedeno, 186 P.3d 1055 (Wash. 2008)). Should you wish to have records mailed to a third party on your behalf, please provide the correct name and mailing address along with the quoted payment. Otherwise, the responsive records will be sent to your attention.

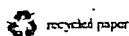
If you choose not to pursue this public disclosure request within thirty (30) days following the date of this letter, this request will be closed. If you have any questions, please contact me at the address below.

Sincerely,

Brett W. Lorentson, Public Disclosure Specialist
Department of Corrections
PO Box 41118
Olympia WA 98504

BL:PDU-7430
cc: File

"Working Together for SAFE Communities"



APPENDIX 000034

Francis v. DOC
DEFS-000004

C-1

EXHIBIT D

July 8, 2009

Brett W. Lorentson, Public Disclosure Specialist
Department of Corrections
PO Box 41118
Olympia, WA 98504

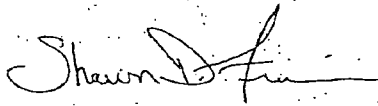
Dear Mr. Lorentson,

I am writing to you in regards to my public disclosure request (PDU-7430). Since my request is under 50 pages of responsive documents, I am requesting you to e-mail the 15 pages of responsive documents to the following e-mail address:

dodieco@hotmail.com

Thank you for your prompt response.

Sincerely,



Shawn Francis, Doc 749717
McNeil Island Corrections Center
PO Box 881000 ; Unit: A-422-1
Steilacoom, WA 98388

EXHIBIT E

Lorentson, Brett W. (DOC)

From: Lorentson, Brett W. (DOC)
Sent: Friday, July 10, 2009 2:55 PM
To: 'dodieco@hotmail.com'
Subject: DOC Public Disclosure Request: PDU-7430, Francis

Attachments: PDU-7430, Francis-Responsive Records.pdf

July 10, 2009

Shawn Francis, DOC 749717
dodieco@hotmail.com

Dear Mr. Francis:

Per your request, I am forwarding 15 pages responsive to your request, PDU-7430, via email. You requested any and all documents related to any reason and/ or justification for the reason why inmates at MICC are not allowed to retain fans and hot pots in their cells, as well as any policy that may be in place to substantiate such restrictions on these items. Since all responsive records have been provided, this request is closed.

We are providing these records to you in accordance with the Public Records Act. By making agency documents available to you, the Department is not responsible for your use of the information or for any claims or liabilities that may result from your use or further dissemination.

Sincerely,


Brett W. Lorentson, Public Disclosure Specialist
Department of Corrections
PO Box 41118
Olympia WA 98504

BL:PDU-7430

cc: File



PDU-7430,
Francis-Responsive R.

 <p>STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS</p> <p>POLICY</p>	APPLICABILITY PRISON OFFENDER/SPANISH MANUALS		
	REVISION DATE 3/1/09	PAGE NUMBER 1 of 10	NUMBER DOC 440.000
	TITLE PERSONAL PROPERTY FOR OFFENDERS		

REVIEW/REVISION HISTORY:

Effective: 9/29/95
 Revised: 4/15/96
 Revised: 12/27/99
 Revised: 5/24/04
 Revised: 7/28/05
 Revised: 11/15/06
 Revised: 3/5/08
 Revised: 3/1/09

SUMMARY OF REVISION/REVIEW:

Added Policy statement II that establishes timeframes regarding unauthorized and permitted offender personal clothing retention
 Added I.A.1. that aside from exceptions noted in policy, offenders may not receive new personal clothing items
 Added XI.A. that between July 1, 2009 and September 30, 2009, offender may ship personal clothing to a non-incarcerated person at Department expense
 Added XI.B. that through December 31, 2009, offenders may dispose of personal clothing via an approved visitor after a scheduled visit
 XI.C.1. - Added language regarding disposition of personal clothing after timeframe cutoff
 XI.E.1. - Adjusted that the Superintendent will make the final judgment of an offender's review request of the decision to place confiscated money or negotiable instruments in the Offender Welfare Betterment Fund
 Several changes to Attachments 1 and 2, including addition of baseball hats
 Added Attachment 3 outlining personal clothing implementation

APPROVED:


Signature on file

 ELDON VAIL, Secretary
 Department of Corrections

1/30/09

 Date Signed

000001

 <p>STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS</p> <p>POLICY</p>	APPLICABILITY PRISON OFFENDER/SPANISH MANUALS		
	REVISION DATE 3/1/09	PAGE NUMBER 2 of 10	NUMBER DOC 440.000
	TITLE PERSONAL PROPERTY FOR OFFENDERS		

REFERENCES:

DOC 100.100 is hereby incorporated into this policy; RCW 11.04.015; RCW 11.08; RCW 11.62.005; RCW 63.42; RCW 72.02.045; WAC 137-36-040; ACA 4-4164; ACA 4-4292; ACA 4-4293; ACA 4-4294; ACA 4-4339; DOC 320.255 IMU/ITU/Segregation/Mental Health Segregation Operations; DOC 420.375 Contraband and Evidence Handling; DOC 440.020 Transport of Offender Property; DOC 450.100 Mail for Offenders; DOC 450.120 Packages for Offenders; DOC 540.105 Recreation Program for Offenders; DOC 560.210 Religious Freedom for Offenders; DOC 590.500 Legal Access for Offenders


POLICY:

- I. Retention of personal property by offenders will follow Department guidelines to meet safety, security, discipline, sanitation, accountability, and storage needs. [4-4164] [4-4292] [4-4294]
- II. Effective January 1, 2010, offenders will not be authorized to retain any personal clothing except shoes/sneakers/sandals, baseball hats, and plastic raincoats per Attachment 3.
 - A. Offenders may retain personal clothing listed on the Maximum Allowable Personal Property Matrix (Attachments 1 and 2) through December 31, 2009.
- III. All property authorized by this policy will be retained at the offender's risk.

DIRECTIVE:


- I. Allowable Property
 - A. The Maximum Allowable Personal Property Matrix (Attachments 1 and 2) identifies the types, value, and amount of personal property authorized for offender retention at the different security levels. [4-4293]
 1. While offenders may retain their personal clothing until December 31, 2009, no new personal clothing items may be received, with the following exceptions:
 - a. Offenders may receive new shoes/sneakers/sandals via monthly vendor packages or quarterly packages per DOC 450.120 Packages for Offenders.
 - b. Offenders may purchase new baseball hats and plastic raincoats from the facility store.

000002

 <p>STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS</p> <p>POLICY</p>	APPLICABILITY PRISON OFFENDER/SPANISH MANUALS		
	REVISION DATE 3/1/09	PAGE NUMBER 3 of 10	NUMBER DOC 440.000
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2. Offenders are responsible for ensuring that the value of the property in their possession is no greater than the dollar values identified on the Maximum Allowable Personal Property Matrix (Attachments 1 and 2). The dollar values indicate the maximum amount that an offender will be reimbursed for the item if it is determined, through the tort claim process, that the item has been lost or damaged due to staff negligence.
- B. Offenders with less restrictive custody than the security level of the facility in which they are housed must comply with the property matrix for that facility's security level.
 1. A temporary segregation placement will not result in an offender having to comply with more restrictive property allowances. Property will be inventoried and stored until the placement decision is made.
 - C. Offenders may acquire personal property only through the following sources:
 1. Facility offender stores,
 2. Approved vendors,
 3. Quarterly packages,
 4. Education or religious programs, and/or
 5. Hobby craft items made by the offender and authorized for retention at the facility.
 - D. The facility will provide for the thorough cleaning and, when necessary, disinfecting of offender personal clothing before storage or before allowing the offender to keep and wear personal clothing. [4-4339]
 1. No dry clean items will be allowed.
 2. The Department may provide washing machines, but offenders are required to provide all supplies for the cleaning and maintenance of their personal clothing.
- II. Exceptions
- A. Superintendents will not allow more or less property or substitute items unless they receive prior written approval through the chain of command from the Assistant Secretary/designee.
- III. Washington Corrections Center (WCC) or Washington Corrections Center for Women (WCCW) Reception Diagnostic Centers
- A. Newly received offenders at WCC or WCCW will receive a copy of the Maximum Allowable Personal Property Matrix (Attachments 1 and 2) during orientation and

000003

 <p>STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS</p> <p>POLICY</p>	APPLICABILITY PRISON OFFENDER/SPANISH MANUALS		
	REVISION DATE 3/1/09	PAGE NUMBER 4 of 10	NUMBER DOC 440.000
	TITLE PERSONAL PROPERTY FOR OFFENDERS		

will sign DOC 21-992 New Offender Orientation Checklist, acknowledging receipt and agreeing that personal property they receive will not exceed the value limits identified. [4-4292]

- B. Newly received offenders will sign DOC 21-139 Property Disposition to identify the name and address of the person to whom unauthorized property currently in their possession should be sent.

1. Persons designated to receive property cannot be presently incarcerated.
2. The offender may determine the disposition of property (i.e., donate to charity or discard) if s/he is not able to identify a person to whom the property should be sent.

- C. Funds arriving with offenders will be placed in the offender's account.


- D. Offenders may not possess appliances while at the Reception Diagnostic Center.

IV. General Housing Units

- A. The following additional items are authorized in general population at close, medium, or minimum facilities:

1. Books, periodicals, and publications must be stored in a space not to exceed a 2,160 cubic inch capacity (e.g., an 18" x 12" x 10" box). These items must be kept in the designated area identified by the facility except when in use.
 - a. Publications must comply with the requirements of DOC 450.100 Mail for Offenders.
2. Legal materials will be authorized per DOC 590.500 Legal Access for Offenders. The materials will be stored in the cell and should not exceed what can be contained in a 2,160 cubic inch box (e.g., 18" x 12" x 10").
3. Unframed personal/family photographs, personal mail, journals or diaries, writing pads, pencils, pens, and personal papers in an amount not to exceed what can be contained in a 432 cubic inch box (e.g., 12" x 6" x 6").
4. Personal religious items, per DOC 560.210 Religious Freedom for Offenders.
5. Toothbrushes, shaving cream, safety razors, and other personal hygiene items authorized for sale in the facility store in an amount not to exceed what can be contained in a 432 cubic inch box (e.g., 12" x 6" x 6").

000004

 <p>STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS</p>	APPLICABILITY PRISON OFFENDER/SPANISH MANUALS		
	REVISION DATE 3/1/09	PAGE NUMBER 5 of 10	NUMBER DOC 440.000
	TITLE PERSONAL PROPERTY FOR OFFENDERS		


POLICY

6. Musical instruments may be retained in compliance with the Maximum Allowable Personal Property Matrix (Attachments 1 and 2) and DOC 540.105 Recreation Program for Offenders. Upon receipt of a musical instrument, and after each transfer, an offender will complete DOC 06-075 Offender Request to Transfer Funds for \$15.00 to cover the shipping charges for the instrument.
7. Completed hobby craft items, as determined by recreation staff, will be mailed out of the facility at the offender's expense. However, completed items that are allowed by the Maximum Allowable Personal Property Matrix (Attachments 1 and 2) may be put on an offender's property inventory. Offenders are responsible for disposing of hobby craft items not included on DOC 05-062 Record of Offender Property at their own expense prior to departing a facility.
 - a. When offenders order hazardous chemicals or hazardous materials, they will request the Material Safety Data Sheet (MSDS) for the product(s). When offenders transfer, chemicals/materials will not be shipped or mailed out of the facility. The products must be disposed of per Environmental Protection Agency (EPA) regulations at the offender's expense.
8. Upon purchase of a television, and after each transfer, offenders will complete DOC 06-075 Offender Request to Transfer Funds for \$15.00 to cover the shipping charges for the television. In cases where a television is shipped and the actual shipping cost exceeds the amount reserved, the difference will be treated as a debt the offender must pay.
 - a. The offender is responsible for any expense for disposal of his/her television.
9. Upon purchase of a radio/stereo/cassette/CD player or typewriter, offenders will complete DOC 06-075 Offender Request to Transfer Funds for \$15.00 to cover the shipping charges for the item.

V. Special Housing Units

- A. Facilities will develop written procedures governing personal property to address the needs of special housing units. The Superintendent may suspend, reduce, or eliminate personal property in these units to:
 1. Ensure the health and/or safety of staff and offenders,
 2. Facilitate medical or mental health treatment objectives, and/or
 3. Maintain order and security.

000005

 <p>STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS</p> <p>POLICY</p>	APPLICABILITY PRISON OFFENDER/SPANISH MANUALS		
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- B. DOC 320.255 IMU/ITU/Segregation/Mental Health Segregation Operations will govern personal property in Intensive Management Units (IMUs). Offender excess personal property not authorized in IMU will be stored by the facility.

VI. Unauthorized Property

- A. Negotiable Instruments are not authorized.
- B. The following types of clothing are prohibited:
1. Black, burgundy, dark green, navy blue, red, and dark colored, with the exception of black shoes and black belts.
 2. Camouflage or clothing that resembles the color or style of custody staff uniforms, including coveralls and jumpsuits.
 3. Hooded clothing and ski masks.
 4. Patches, writing, and graphics which are sewn, glued, stitched, or appliquéd onto material in a design that is not part of the material, except logos associated with the brand name of the manufacturer if no larger than 2" x 2".
 5. Leather garments, including gloves.
- C. Headquarters will provide a color chart to be used for consistency in determining unauthorized colors. Only the original chart may be used. Copies may not be made. Replacements must be obtained from Headquarters.
- D. Pagers, cellular phones, watches that receive text messages, and other such devices will be disposed of as contraband.


VII. Restriction of Incoming and Outgoing Personal Property

- A. If any portion of an offender's incoming or outgoing personal property is restricted, property staff will provide written notification to the offender using DOC 21-139 Property Disposition.
- B. Each facility will develop an internal appeal process. The Superintendent/designee will make the final decision.

VIII. Property Inventory

- A. All personal property retained by an offender will be itemized and recorded on DOC 05-062 Record of Offender Property or local computer version. [4-4294]

000006


 STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS	APPLICABILITY PRISON OFFENDER/SPANISH MANUALS		
	REVISION DATE 3/1/09	PAGE NUMBER 7 of 10	NUMBER DOC 440.000
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POLICY

Items will be marked with the offender's number for identification. Items which cannot be marked (e.g., glasses) must be thoroughly described and identified as unmarked on DOC 05-062 Record of Offender Property or equivalent.

1. Offenders should not be authorized to handle the property of other offenders, and will not process personal property of other offenders. However, offenders may be authorized to launder other offenders' personal clothing under direct staff supervision.
 2. Any inventory of personal property will be completed in the presence of the offender, when possible.
 - a. All items will be listed using accurate, descriptive information, including:
 - 1) Size,
 - 2) Color,
 - 3) Make or brand,
 - 4) Serial or identification number, and
 - 5) The condition of the item.
 - b. Additions or deletions on DOC 05-062 Record of Offender Property will be made by staff.
 - c. The offender will be responsible to ensure his/her DOC 05-062 Record of Offender Property remains accurate and current.
 3. The offender will be permitted to review the completed DOC 05-062 Record of Offender Property before signing. The designated staff will witness the signature.
- B. Offender personal property will be inventoried and secured as appropriate in the event of escape, death, or an anticipated extended absence of the offender.
1. The property will be boxed, taped, and placed in a secured area. Large items that cannot be boxed will be tagged.
 2. Staff will handle offender property with care to avoid damage, destruction, or misrouting.
 3. The staff conducting the inventory will sign and date DOC 05-062 Record of Offender Property. A copy of the form will be given to the offender or, in the case of death, the person designated to receive the property, as soon as possible.

000007

 <p>STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS</p> <p>POLICY</p>	APPLICABILITY PRISON OFFENDER/SPANISH MANUALS		
	REVISION DATE 3/1/09	PAGE NUMBER 8 of 10	NUMBER DOC 440.000
	TITLE PERSONAL PROPERTY FOR OFFENDERS		

IX. Property Transfer

- A. All offender personal property will be inventoried and secured prior to transfer. Only authorized property will be transported/mailed/shipped to other Department facilities.
- B. The Department will transport a limited amount of offender property per DOC 440.020 Transport of Offender Property. Offenders accumulating more than the amount of property the Department will transport will do so at their own risk. The Department assumes no responsibility in transporting such excess property.
- C. Offenders transferred from one facility to another will arrange for the shipping of their excess authorized personal property, at their own expense, prior to leaving the sending facility. The offender will have 90 days from the date of transfer to arrange for shipping of such property. Failure to comply will result in the property being declared abandoned and disposed of per this policy.
- D. All offender personal property secured for transport, regardless of carrier, may not exceed 25 pounds per box.


X. Property Storage

- A. Offenders will store personal property per facility requirements.
- B. Facilities will only store offender personal property when:
 - 1. Offenders are placed in segregation, the hospital, out to court, or other situations where they temporarily lose control of their personal property.
 - 2. Offender personal legal documents exceed the amount allowed to be stored by the offender.

XI. Disposition Options


- A. Between July 1, 2009, and September 30, 2009, offenders can dispose of personal clothing (i.e., no more than 2 - 18" x 12" x 10" boxes, 15 pounds each) by shipping it, at the Department's expense, to a non-incarcerated person designated on DOC 21-139 Property Disposition.
- B. Through December 31, 2009, offenders may dispose of personal clothing via an approved visitor after a scheduled visit.
- C. Offenders will have 30 days to dispose of the property identified as excess or unauthorized.

000008

 STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS POLICY	APPLICABILITY PRISON OFFENDER/SPANISH MANUALS		
	REVISION DATE 3/1/09	PAGE NUMBER 9 of 10	NUMBER DOC 440.000
	TITLE PERSONAL PROPERTY FOR OFFENDERS		

1. Offenders may dispose of their excess or unauthorized personal property, including personal clothing disposed of after September 30, 2009, by shipping it, at their own expense, to a non-incarcerated person designated by the offender on DOC 21-139 Property Disposition.
2. If the offender is without funds, refuses to pay the required postage, or refuses to designate an individual to receive the property, such items will be:
 - a. Donated to a charitable organization per WAC 137-36-040, or
 - b. Destroyed by staff per DOC 420.375 Contraband and Evidence Handling.
- D. Any items found in the offender's possession that are not listed on the property record, have distorted or altered markings, or are substantially modified from the manufacturer's original configurations will be considered contraband and disposed of per DOC 420.375 Contraband and Evidence Handling.
- E. Currency, personal checks, credit cards, and money orders are considered negotiable instruments and are contraband in Prisons. If found in the unauthorized possession of an offender, an infraction will be initiated and the money or negotiable instrument confiscated immediately and deposited in the Offender Welfare Betterment Fund.
 1. The offender will be advised, in writing, of his/her right to seek review of the decision to place the money in the Offender Welfare Betterment Fund. The request for review must be made, in writing, to the Superintendent within 10 calendar days. The Superintendent will make the final decision.
- F. All illegal items owned by and/or found in the possession of an offender will be confiscated. Such items will be held as evidence for law enforcement authorities. Illegal items that do not need to be retained as evidence will be destroyed per DOC 420.375 Contraband and Evidence Handling.
- G. Abandoned personal property, with the exception of excess authorized personal property as described above, will be disposed of per WAC 137-36-040.
- H. Property of deceased offenders not disposed of as abandoned per WAC 137-36-040 will be disposed of per RCW 11.08.
 1. Any person claiming to be a successor, as defined in RCW 11.62.005, must submit DOC 05-698 Affidavit for Disposition of Personal Property and provide proof of qualification before the Superintendent may transfer property.

000009

 <p>STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS</p> <p>POLICY</p>	APPLICABILITY PRISON OFFENDER/SPANISH MANUALS		
	REVISION DATE 3/1/09	PAGE NUMBER 10 of 10	NUMBER DOC 440.000
	TITLE PERSONAL PROPERTY FOR OFFENDERS		

a. Offenders may not receive a deceased offender's property by Will.

2. A copy of the affidavit will be mailed, along with the deceased offender's social security number, to the Washington State Department of Social and Health Services' Office of Financial Recovery.

XII. Restrictions

A. Offenders may not trade, sell, buy, barter, loan, or give away any personal property to another offender, another offender's family and/or friends, or staff.

XIII. Return of Personal Property upon Release

A. Upon formal release from a Department facility, an offender's personal property in the custody of the facility will be returned to him/her.

B. The offender must sign DOC 05-062 Record of Offender Property acknowledging return of all personal property upon release. The original form will be placed in the offender's file.

XIV. Compliance Audits

A. Each facility will establish written procedures to ensure each offender's property is inventoried at least once each year. Excess or unauthorized property will be disposed of per this policy.

DEFINITIONS:

The following words/terms are important to this policy and are defined in the glossary section of the Policy Manual: Contraband, Illegal Items, Offender's Expense. Other words/terms appearing in this policy may also be defined in the glossary.

ATTACHMENTS:

Maximum Allowable Personal Property Matrix - Men's Facilities (Attachment 1) [4-4293]
Maximum Allowable Personal Property Matrix - Women's Facilities (Attachment 2) [4-4293]
Implementation Plan (Attachment 3)

DOC FORMS:

DOC 05-062 Record of Offender Property [4-4294]
DOC 05-698 Affidavit for Disposition of Personal Property
DOC 06-075 Offender Request to Transfer Funds
DOC 21-139 Property Disposition
DOC 21-992 New Offender Orientation Checklist

000010



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
OFFICE OF THE SECRETARY
P. O. Box 41101 • Olympia, Washington 98504-1101 • Tel (360) 725-8200
FAX (360) 664-4055

ADMINISTRATIVE BULLETIN AB-09-009

DATE: March 23, 2009

TO: Executive Staff

FROM: Eldon Vail
Secretary

RE: DOC 440.000 Personal Property for Offenders

Changes to this policy are effective immediately.

Change Directive XI.D.:

- D. Any items found in the offender's possession, except magazine and newspaper articles/clippings, that are not listed on the property record, have distorted or altered markings, or are substantially modified from the manufacturer's original configurations will be considered contraband and disposed of per DOC 420.375 Contraband and Evidence Handling.

Direct any questions regarding this administrative bulletin to Dan Pacholke, Deputy Director.

EV:dp

cc: Autumn Witten, Policy Program Manager

"Working Together for SAFE Communities"

000011

IMPLEMENTATION PLAN

With implementation of the revised DOC 440.000 Personal Property for Offenders scheduled to begin on March 1, 2009, and full implementation to be completed by December 31, 2009, several steps must occur. Following is the schedule of events necessary to complete the implementation.

- January 30, 2009 – Revised DOC 440.000 Personal Property for Offenders posted.
- March 1, 2009 – Revised policy goes into effect. Offenders no longer authorized to receive personal clothing from outside sources via quarterly or vendor package. Any clothing items received via package after this date must be returned at offender expense or otherwise disposed as authorized by policy.
- Offenders at all facilities are authorized to continue to retain and order personal shoes as defined in the personal property matrix.
- Offenders at all facilities are authorized to purchase and retain a baseball style cap and plastic raincoat only through the offender store.
- Offenders within 90 days of release are authorized to receive via quarterly package/ order through vendor package, one set of personal clothes to be worn on day of release only.
- The state issued clothing matrix will be increased by one pair of sweatpants for all offenders. Female offenders will also be issued one additional pair of pants, 2 sets of pajamas, 2 nightgowns, and a sweatshirt. Offenders received at the Reception Diagnostic Centers will be issued the additional clothing as part of their regular issue. Offenders already residing in facilities will not be issued the additional state clothing until their personal property limits are at the new levels.
- The use/maintenance of washers/dryers throughout the Department will be phased out. New equipment will not be purchased. Existing equipment will not be repaired unless it is necessary to maintain the availability of limited equipment through December 31, 2009. Each facility will develop a plan to meet these criteria.
- Offenders are authorized to send out with a visitor, at the conclusion of a scheduled visit, any personal clothing eliminated as the result of the implementation of this policy through December 31, 2009.
- July 1, 2009 – September 30, 2009 – Offenders are authorized to send out up to 2 boxes of clothing each weighing no more than 15 pounds at Department expense.
- October 1, 2009 – Any clothing sent out via the mail will be at offender expense.
- January 1, 2010 – All offender property will be at the new property levels. Any personal clothing other than that authorized by policy will be considered contraband and handled in accordance with policy.

Rev. (3/09)

DOC 440.000 Attachment 3

000012

MAXIMUM ALLOWABLE PERSONAL PROPERTY MATRIX MEN'S FACILITIES

CLOTHING								
ITEM	DESCRIPTION	MIN	MED	CLS	MAX	REC	WR	VALUE \$ (each)
Athletic support	Standard design	1	1	1	0	0	0	10.00
Baseball Hat	Khaki; offender store purchase only	1	1	1	0	0	1	
Belt	Plain leather or cotton mesh; open buckle no larger than 2" x 2"; unlined	1	1	1	0	0	3	20.00
Coat; Winter weight	Heavy lining; hoodless; no longer than mid-thigh; no zip-out linings	0	0	0	0	0	2	100.00
Gloves	Foul weather whole full finger; cloth or knit only; no padding; no leather	0	0	0	0	0	3	12.00
Handkerchiefs	White only; no larger than 12" x 12"	2	2	2	0	0	10	2.00
Hat/Cap	Stocking	0	0	0	0	0	2	15.00
Jacket/Coat; Light weight	Light lining; hoodless; sweaters/ sweatshirts with zipper, snap, or button front; waist length	1	1	1	0	0	1	50.00
Long underwear	Standard 2 piece set, top and bottom; no one piece	1	1	1	0	0	2	30.00 set
Pajamas		1	1	1	0	0	2	25.00 set
Raincoat	Clear plastic only; may be hooded	1	1	1	0	0	1	
Robe	Standard tie waist; ¾ length only	1	1	1	0	0	1	50.00
Shirts	No "half shirts" or mesh type; no epaulets	3	2	2	0	0	10	25.00
Shoes/Sneakers	Sneakers/tennis shoes/dress shoes; 6" or less from bottom of heel to top of shoe/ sneaker; 1" or less heel thickness for all non-continuous soled shoes; tennis shoes are continuous soled shoes; all shoes must pass metal detector	2	2	1	0	1	3	100.00
Shorts	No tight-fitting (i.e., spandex, lycra, or other elasticized material); no cutoffs or altered; no less than 4" inseam; no invisible pockets or reversible shorts; no open fly boxer-style	2	1	1	0	0	4	20.00
Slippers		0	0	0	0	0	1	20.00
Socks	Non-solid white dress sock; standard crew or calf length; gym or dress	2 pr	2 pr	1 pr	0	0	10 pr	3.00 pair
Sweat clothes	2 piece set; cotton/cotton blend, hoodless; no zipper Top: Standard long sleeve pullover; crew or v-neck Bottom: Standard drawstring/elastic waist; elastic or open ankle; no jogging suits	2	1	1	0	0	3	35.00 set
Sweater	Knit pullover; crew or v-neck, snap, turtleneck, button front; no zipper	1	0	0	0	0	2	35.00
Trousers/Pants	Pants/jeans; sized proportionately to the offender; straight leg or boot cut leg; no tight-fitting (i.e., spandex, lycra, or other elasticized material); no invisible pockets or reversible pants; no cargo pants or pockets on pant legs; no hip-huggers or low-rise; no lanyards; no carpenter.	2	2	1	0	0	10	40.00
Undershirts	Standard; short sleeved; plain white tee shirt; crew or v-neck	3	3	3	0	0	10	5.00
Undershorts	Boxer shorts; cotton/cotton blend; white	3	3	3	0	0	10	5.00

This matrix identifies the maximum amount of personal property allowed.

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DOC 440.000 Attachment 1
DOC 440.010 Attachment 1

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Francis v. DOC
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APPENDIX 000051

MAXIMUM ALLOWABLE PERSONAL PROPERTY MATRIX MEN'S FACILITIES

HEALTH CARE ITEMS

ITEM	DESCRIPTION	MIN	MED	CLS	MAX	REC	WR	VALUE (\$) (each)
Contacts, prescription	Contacts will be clear disposable/non-disposable, as prescribed							
Glasses, prescription	State issue; if authorized by Health Services, 2nd pair must be offender paid or prepaid vendor package.	1	1	1	1	1	2	
Glasses/ Contacts case	Glasses case, one; contacts case must be clear, one; if authorized by Health Services; 2nd case must be offender paid or prepaid vendor package							
Sunglasses	Non-reflective type; no mirrored; offender store purchase only	1	1	1	0	0	1	20.00

JEWELRY

ITEM	DESCRIPTION	MIN	MED	CLS	MAX	REC	WR	VALUE (\$) (each)
Earring	Post type only; no gems/stones; 8mm maximum	1 pr	1 pr	1 pr	0	0	2 pr	15.00 pair
Medallion	2"; no gems/stones	1	0	0	0	0	1	50.00
Neck chain	24" maximum; no gems/stones	1	0	0	0	0	1	50.00
Wedding band/ Ring	No gems/stones; only authorized if the offender is married	1	1	1	1	1	1	100.00
Wristwatch	Time, day, date, alarm, and stopwatch functions only; no gems/stones	1	1	1	0	0	1	100.00

Combined maximum total value for all jewelry is \$300.00.

Except for wedding bands, jewelry cannot be solid gold or sterling silver.

MAJOR NON-CONSUMABLES

ITEM	DESCRIPTION	MIN	MED	CLS	MAX	REC	WR	VALUE (\$) (each)
Alarm clock	Wind-up only; VWR may have electric	1	1	1	0	0	1	20.00
Electric fan	12" maximum	1	1	1	0	0	Per facility	25.00
Electric razor or Hair trimmer	Non-rechargeable; as authorized by facility	1	1	1	0	0	1	50.00
Headphones/ Earphones		1	1	1	0	0	1	20.00
Radio/Cassette/ CD player	AM/FM radio and/or cassette player/recorder, single cassette only; CD player, single CD only; 18" x 10" x 6" maximum; batteries as authorized by facility	1	1	1	0	0	1	70.00
Television; no remote	Must be portable with earplug or earphone attachment capability; screen size 15" maximum; traditional CRT or flat panel	1	1	1	0	0	Per facility	Offender store
TV cable	6 feet maximum; as authorized by facility	1	1	1	0	0	1	
Typewriter & accessories	Portable; electric, manual, or memory (no disks or memory expansion card; maximum memory 64K); no batteries allowed; limit 4 ribbons with machine and one spare print apparatus/wheel	1	1	1	0	0	0	300.00

This matrix identifies the maximum amount of personal property allowed.

Rev. (3/09)

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DOC 440.000 Attachment 1
DOC 440.010 Attachment 1

000014

Francis v. DOC
DEFS-000023

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APPENDIX 000052

MAXIMUM ALLOWABLE PERSONAL PROPERTY MATRIX MEN'S FACILITIES

MISCELLANEOUS

ITEM	DESCRIPTION	MIN	MED	CLS	MAX	REC	WR	VALUE (\$) (each)
AC adapter	One each for each approved electrical device; 5 maximum	← See description					2	
Bicycle		0	0	0	0	0	1	
Bicycle lock		0	0	0	0	0	1	
Bicycle helmet		0	0	0	0	0	1	
Bowl	Plastic only	1	1	1	0	0	2	
Brush, hair	Plastic only; one piece	1	1	1	0	0	1	
Calculator	Offender store purchase only	1	1	1	0	0	1	
Cards, playing; deck	Standard and Pinochle	2	2	2	0	0	2	
Cassette head/CD cleaner	No solvent-based cleaning fluids	1	1	1	0	0	1	
Cassette tape/CD holder	Plastic only; may hold only the maximum number of tapes/CDs allowed	1	1	1	0	0	1	
Cassette tapes/CDs	Clear case, glued or screwed, or glued opaque; pre-recorded commercial tapes/CDs or authorized letter tapes/CDs	20	20	20	0	0	20	20.00 each
Comb	Plastic only; no rattail	1	1	1	0	0	1	
Cup/Tumbler	Plastic only; no thermal or insulated unless clear	1	1	1	0	1	1	
Do rag		0	0	0	0	0	1	
Ear plugs	Noise protection	1 set	1 set	1 set	0	0	2 sets	
Extension cord/Power strip	6 feet maximum; UL approved; as authorized by facility per local Fire Marshall requirements	1	1	1	0	0	1	
Games	Dominos, Chess, or Checkers only	2	2	2	0	0	2	
Hangers	Plastic	As authorized by facility					14	
Headphone extension cord	12 feet maximum	1	1	1	0	0	1	6.50
Hot pots	Plastic; as authorized by facility	1	1	1	0	0	0	
Mirror	Plastic; 4" x 6" maximum; one piece	1	1	1	0	0	1	
Musical instrument and accessories	As authorized by facility	1	1	1	0	0	Per facility	400.00
Nail clipper, large	Without file	1	1	1	0	0	1	
Nail clipper, small	Without file	1	1	1	0	1	1	
Photo album	Photos only; no metal binders; not for newspaper or magazine clippings; 8½" x 11" maximum	1	1	1	0	0	1	
Pick	Plastic only; no rattail	1	1	1	0	0	1	
Pitcher	Plastic only; no thermal or insulated; clear; 2 quart maximum	1	1	1	0	0	1	
Reading lamp	Plastic only; plastic clamp only	1	1	1	0	0	1	
Soap dish	Plastic only	1	1	1	0	0	1	
Sports awards/plaques/medals	State issue	2	2	2	0	0	2	
Toothbrush holder	Plastic, clear	1	1	1	0	0	1	
Tweezers	3½" maximum size	1	1	1	0	0	1	
Y adapter		1	1	1	0	0	1	5.00

This matrix identifies the maximum amount of personal property allowed.

Rev. (3/09)

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DOC 440.000 Attachment 1
DOC 440.010 Attachment 1

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Francis v. DOC
DEFS-000024

E-16

EXHIBIT F



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
P.O. Box 41100 • Olympia, Washington 98504-1100

July 21, 2010

Shawn Francis, DOC 749717
WSR — CH1 / A122L
MCC
PO Box 777
Monroe WA 98272

Dear Mr. Francis:

I have enclosed 11 additional responsive pages to your public disclosure request, PDU-7430. The records include MICC Operational Memorandum: MICC 440.000 - Personal Property for Offenders. You requested any and all documents related to any reason and/ or justification for the reason why inmates at MICC are not allowed to retain fans and hot pots in their cells, as well as any policy that may be in place to substantiate such restrictions on these items. Since all responsive records have been provided, this request is closed.

We are providing these records to you in accordance with the Public Records Act. By making agency documents available to you, the Department is not responsible for your use of the information or for any claims or liabilities that may result from your use or further dissemination.

If you have any questions regarding these records, please contact me at the address below.

Sincerely,

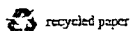
Brett W. Lorentson, Public Disclosure Specialist
Department of Corrections
PO Box 41118
Olympia WA 98504

BL:PDU-7430

Enclosure

cc: File


"Working Together for SAFE Communities"



APPENDIX 000055

Francis v. DOC
DEFS-000028

F-1

 STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS McNeil Island Corrections Center OPERATIONAL MEMORANDUM	APPLICABILITY STAFF/OFFENDER		
	REVISION DATE 5/10/10	PAGE NUMBER 1 of 6	NUMBER MICC 440.000
	TITLE PERSONAL PROPERTY FOR OFFENDERS		

REVIEW/REVISION HISTORY:

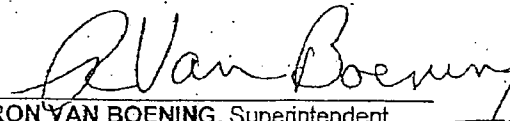
Policy Effective/Revision Date

Revised: 7/14/97	9/29/95	Ad Bulletin: 11/4/03	12/27/99
Revised: 8/1/99	4/15/96	Ad Bulletin: 8/5/04	5/24/04
Ad Bulletin: 12/1/00	12/27/99	Ad Bulletin: 9/12/05	7/28/05
Ad Bulletin: 2/16/01	12/27/99	Ad Bulletin: 3/24/06	7/28/05
Ad Bulletin: 6/20/01	12/27/99	Ad Bulletin: 8/4/06	7/28/05
Ad Bulletin: 8/14/01	12/27/99	Revised: 11/15/06	11/15/06
Ad Bulletin: 10/18/01	12/27/99	Ad Bulletin: 6/13/07	11/15/06
Ad Bulletin: 10/21/01	12/27/99	Revised: 3/05/08	3/5/08
Revised: 11/12/01	12/27/99	Reviewed: 11/17/08	3/5/08
Ad Bulletin: 1/22/02	12/27/99	Revised: 3/1/09	3/1/09
Ad Bulletin: 12/23/02	12/27/99	Revised: 3/1/09	6/26/09
Ad Bulletin: 5/5/03	12/27/99	Revised: 12/1/09	12/15/09
		Revised: 1/1/10	1/15/10
		Revised: 4/19/10	4/19/10
		Revised: 5/10/10	4/19/10

SUMMARY OF REVISION/REVIEW:

LC.2 - Identify approved vendors.
 VII.B. - Identify the internal appeal process.
 XJA - Identify the facility requirements.
 XVA - Identify the written procedures. This means if offender's property was inventoried last year, it does not need to be inventoried. Property of offenders who have not had property inventoried within a year's time need to have an inventory completed.

APPROVED:


 RON VAN BOENING, Superintendent


5-10-10
 Date Signed

PDU-7430 2 000001

APPENDIX 000056

Francis v. DOC
 DEFS-000029

F-2

 <p>STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS</p> <p>McNeil Island Corrections Center</p> <p>OPERATIONAL MEMORANDUM</p>	<p>APPLICABILITY STAFF/OFFENDER</p>		
	<p>REVISION DATE 5/10/10</p>	<p>PAGE NUMBER 2 of 6</p>	<p>NUMBER MICC 440.000</p>
	<p>TITLE PERSONAL PROPERTY FOR OFFENDERS</p>		

REFERENCES:

DOC 440.000 Personal Property for Offenders; DOC 420.320 Searches of Facilities; DOC 440.020 Transport of Offender Property; DOC 560.210 Religious Freedom for Offenders

OPERATIONAL MEMORANDUM:

- I. DOC 440.000 Personal Property for Offenders, revision date 04/19/10, will serve as the Operational Memorandum for McNeil Island Corrections Center (MICC), as well as the procedures outlined below.
- II. The Associate Superintendent of Programs is responsible for managing the requirements of this Operational Memorandum.
- III. Any personal property not specifically authorized by DOC Policy, MICC Operational Memorandum, or issued by MICC will be handled as contraband and infractions will be written as appropriate.

PROCEDURES


- I. Allowable Property
 - A.
 3. The offender's Classification Counselor will verify that an offender is married or in a state registered domestic partnership prior to Receiving and Discharge (R & D) staff issuing a personal ring.
 - C.
 2. Approved vendors, as listed in MICC Approved Vendors (Attachment 4).
 - D. Offenders may not possess more than \$125 in consumable offender store items.
- VI. Special Housing Units
 - C. Offenders housed in the MICC clinic may be permitted certain items of personal property. It is the offender's responsibility to send a request for these items to the Health Care Manager or to the Correctional Unit Supervisor of his living unit.

PDU-7430 2 000002

APPENDIX 000057

Francis v. DOC
DEFS-000030

F-3

 <p>STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS</p> <p>McNeil Island Corrections Center</p> <p>OPERATIONAL MEMORANDUM</p>	<p>APPLICABILITY STAFF/OFFENDER</p>		
	<p>REVISION DATE 5/10/10</p>	<p>PAGE NUMBER 3 of 6</p>	<p>NUMBER MICC 440.000</p>
	<p>TITLE PERSONAL PROPERTY FOR OFFENDERS</p>		

- D. Offenders housed in the clinic or participating in the Extended Family Visits for a period not exceeding 24 hours may elect to have their property secured in their locker in the living unit or in the storage lockers in the unit property room.
- E. Offenders placed in segregation will immediately have any personal property in their possession inventoried by segregation staff.
 - 1. All personal property inventoried by segregation staff will be returned to the offender's living unit for storage.
 - 2. Personal property left in the unit will be inventoried by the unit staff and placed in the unit storage area.
 - 3. Copies of completed inventories will be forwarded to the offender's previous living unit and the offender.

VII. Unauthorized Property

- C. The following items are also prohibited:
 - 1. Electric fans,
 - 2. Clothes hangers,
 - 3. Footwear having zippered-type closures instead of traditional shoelaces, concealed or hidden areas, and those that are a shoe within a shoe,
 - 4. Attachments to hair/beard trimmers,
 - 5. Hobby craft items made by another offender,
 - 6. Immersion heaters, and
 - 7. Hot pots.
- D. When possible, valuable items such as electrical appliances and musical instruments will have seals placed on them. If the seals are tampered with, the item will be confiscated as contraband and infractions written as appropriate.

VIII. Restriction of Incoming and Outgoing Personal Property


- B. Each facility will develop an internal appeal process to address the needs of the facility. The final decision will come from the Associate Superintendent of Program.

PDU-7430 2 000003

APPENDIX 000058

Francis v. DOC
DEFS-000031-

F-4

 STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS McNeil Island Corrections Center OPERATIONAL MEMORANDUM	APPLICABILITY STAFF/OFFENDER		
	REVISION DATE 5/10/10	PAGE NUMBER 4 of 6	NUMBER MICC 440.000
	TITLE PERSONAL PROPERTY FOR OFFENDERS		

1. The offender will submit his appeal on Personal Property Appeal Form (Attachment 3) within 10 days of the date listed on DOC 21-139 Property Disposition. He must obtain an appeal receipt from unit staff.

IX. Property Inventory

- C. Living unit staff will conduct a property inventory using MICC Property Inventory Procedure (Attachment 2) whenever staff takes possession of an offender's personal property. Staff members will complete the MICC Property Inventory Checklist (Attachment 1) in addition to DOC 05-062 Record of Offender Personal Property.

1. The original MICC Property Inventory Checklist will be placed in the offender's living unit files with a copy to R&D. DOC 05-062 Record of Offender Personal Property will be completed and copies distributed in the following manner:
 - a. Original – R&D;
 - b. One copy in the property box,
 - c. One copy to the offender,
 - d. One copy in the living unit files, and
 - e. One copy on the outside of the property box.
2. Boxes found without a copy of DOC 05-062 on the outside of the box will:
 - a. Immediately be inventoried by unit staff in the presence of the Unit Sergeant and prepare a new DOC 05-062 Record of Offender Personal Property, and
 - b. Be properly secured.

XI. Property Storage

A.

1. Personal property for offenders will not exceed the capacity of the locker, desk shelves, and authorized storage space, with the exception of typewriters, musical instruments, and televisions.



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

McNeil Island Corrections Center

**OPERATIONAL
MEMORANDUM**

APPLICABILITY
STAFF/OFFENDER

REVISION DATE
5/10/10

PAGE NUMBER
5 of 6

NUMBER
MICC 440.000

TITLE
PERSONAL PROPERTY FOR OFFENDERS

2. Offenders are required to secure their personal property with locks sold through the offender store. When an offender is determined to be indigent, their account will be debited.

B.

1.

- a. Temporary storage of an offender's personal property is provided in the living unit's storage area. Living unit rules describe authorized storage space for offender personal property.

XII. Disposition Options

- G. Records staff will notify the Hobby Shop Supervisor of pending releases from the facility so chemicals and other materials can be properly disposed of.

XV. Compliance Audits

A.

1. Each living unit will maintain an Inventory Compliance Audit Log. Staff will complete property compliance audits on 10 percent of the unit's population each month. Compliance audits will also be completed each time an offender moves from one living unit to another.
2. Excess or unauthorized property will be disposed of in accordance with DOC 440.000 Personal Property for Offenders.

ATTACHMENTS:

DOC 440.000 Personal Property for Offenders
MICC Property Inventory Checklist (Attachment 1)
MICC Property Inventory Procedure (Attachment 2)
Personal Property Appeal (Attachment 3)
MICC Approved Vendors (Attachment 4)

FORMS:


DOC 05-062 Record of Offender Personal Property
DOC 21-139 Property Disposition

PDU-7430 2 000005

APPENDIX 000060

Francis v. DOC
DEFS-000033

F-6

 STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS McNeil Island Corrections Center OPERATIONAL MEMORANDUM	APPLICABILITY STAFF/OFFENDER		
	REVISION DATE 5/10/10	PAGE NUMBER 6 of 6	NUMBER MICC 440.000
	TITLE PERSONAL PROPERTY FOR OFFENDERS		

PDU-7430 2 000006

APPENDIX 000061

Francis v. DOC
 DEFS-000034

F-7

**McNEIL ISLAND CORRECTIONS CENTER
PROPERTY INVENTORY CHECKLIST**

INMATE NAME _____ DOC # _____ HOUSING UNIT/RM # _____

ITEM	YES	NO
Was the offender present during pack-up?		
Were all large items marked with the correct DOC number?		
If not, was the item confiscated?		
If confiscated, was a Search and Evidence Report prepared?		
Was a proper description of the property given? (Size, color, brand name, serial and/or model number, condition, i.e., torn clothes, frayed electrical cord, scratched, used, etc)?		
After pulling the inmate's personal property, was it stored in a secure area?		
If so, when and where?		
Were 5 copies of the inventory sheet(s) made and signed by two staff (one staff and inmate, if inmate was present during pack-up)?		
Were the boxes properly marked?		
Was an infraction written for confiscated items, if discovered?		
Were the personal property inventory sheets used in accordance with the property matrix?		
Was property left unsecured?		
If unsecured, did you so indicate on the top of the form?		
Was the number of boxes indicated on the inventory form and box label?		
Box # Room #		
Is one copy of the inventory sheet inside the box, one on the outside of the box, one sent to the Sergeant, one sent to R&D, and one to the inmate?		
Are the address book and reading glasses, if any, at the top of the box?		
Was the inventory left from a prior shift?		
Was the inmate's cellmate present when property was removed from the room for proper identification?		
If the inmate has a Sacred Items box, was the Sacred Items Box inspected for contraband?		
If not, why?		
The Sacred Items box was placed in packing box #		
If so, by whom?		
Did the inmate take his own property to R&D with an officer escorting him?		
ONLY THE CUS OR HIGHER CAN AUTHORIZE A SEARCH OF THE BOX, AFTER IT IS PACKED AND SEALED		

Staff Name (Printed)	Staff Signature	Date
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Inmate Name and DOC # (Printed)	Inmate Signature	Date
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MICC 440.000 Attachment 1

PDU-7430 2 000007

APPENDIX 000062

**Francis v. DOC
DEFS-000035**

F-8

PROPERTY INVENTORY PROCEDURE
(ATTACHMENT TO OM)

- Immediately secure all offender property once it is known the offender will no longer have possession (Segregation placement, Health Services Admission, Emergency Medical Trip, Escape) of their personal property (to prevent loss or theft),
- Obtain **Individual Property Matrix** (IPM = computer version of *Master Property File*) printed prior to inventory.
- Ensure two staff perform the inventory when offender is not present (decreases liability, increases accuracy and accountability during the inventory process).
- Utilizing *IPM* identify all of the offender's personal property, secure it for inventory. Identify all items listed on IPM as 'packed' or 'missing'.
- If an offender is placed in Segregation, ensure that the property is returned to the unit and secured with the property from the offender's room (make entry in unit log and inform verbally with the oncoming shift if unable to accomplish prior to end of shift). Initiate section A of DD form and attach to the unit copies of the completed inventory for the Unit Sergeant's review. Utilizing 05-062, Record of Offender Property, list (record) all offender personal property which has been verified according to IPM. Utilize (1) one 05-062 form to accurately list and describe the contents of each box. Close out the form when no other items will be added to this box (mark the box and 05-062, as box#1). Continue inventorying the property in this manner until completed. A numbered succession (box count) will be established, making for easy tracking of each box and the contents. The 05-062 must include the "reason for inventory" at the top of the form (e.g. Transfer, Seg Placement, Release). Staff must ensure to, date, sign and print their name on all forms. Electronic appliances (radios/boom - box style not walk man style, televisions, typewriters, musical instruments) must be packaged separately and cannot not be packed into boxes with other offender personal property. Electronic appliances must be listed on DOC form 05-062, however they must NOT factor into the overall box count of personal property boxes. Musical instruments must be forwarded to the Music Room for shipping (not R&D). DOC 05-062, has a separate section to list musical equipment.
- Staple together and forward the original(s) of DOC for-refs) 05-062, with the completed IPM to R&D.
- Securely tape each box completely closed (do not store open).
- Utilize DOC form 21-329, *Property ID Label*, to mark each box inventoried. DOC form 05-062, must reflect the offender's name, DOC number, date, location (e.g. Transfer to the new facility, Seg placement the new housing assignment, Release to)-
- Offender Personal Property (*non-consumable*) not listed on IPM is contraband. Confiscate and record on DOC form 05-384, *Search Report*, Attach the completed 05-364 form; to confiscated personal property (paper bag/box) and bring it to R&D (after hours secure the property on the bench in the tunnel outside R&D's entrance). *Hazardous*, dangerous, illegal, or serious

MICC 440.000 Property Inventory Procedures
Attachment 2

PDU-7430 2 000008

APPENDIX 000063

Francis v. DOC
DEFS-000036

F-9

contraband-must be processed in accordance with DOC 420.375, *Contraband Management*, and will not be included with any contraband brought to R&D. Religious Property, Utilizing 05-062, record the "presence" of a 'sacred items boxes' (if found). The offender's first and last name and DOC number must be on the outside of the box. The handling, inspection and searches of these boxes will be performed consistent with DOC 560.210, *Religious Freedom for Offenders*, and DOC 420.320, *Searches of Facilities*.

SPECIAL NOTE:

Ensure to distribute all forms in accordance to the distribution designation listed on the bottom of each form.

STATE ISSUED CLOTHING:

Do not pack State Issued Clothing in with personal property. Each offender should have a "STATE ISSUE TRANSPORT BAG". When offenders transfer from one facility to another it is required that there state issued clothing accompany them. If the offender's "STATE ISSUE TRANSPORT BAG" cannot be located at the time of pack-up place into a separate chain box label with the offender's name and number then CLEARLY mark the box STATE ISSUE. Complete an inventory of the state issued clothing *secured for* inventory. Record the inventory on a separate DOC form 05-062, mark the top of the *form* "STATE ISSUE CLOTHING" (do not include this inventory sheet/box in the overall box count). Attach completed form to personal property forms and forward to R&D. Secure the State Issued Clothing in same area as the offender's personal property.

MICC 440.000 Property Inventory Procedures
Attachment 2

PDU-7430 2 000009

APPENDIX 000064

Francis v. DOC
DEFS-000037

F-10



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

PRISONS DIVISION

McNEIL ISLAND CORRECTIONS CENTER

PO Box 83900 • MS:WT-01 • Steilacoom, Washington 98388-0900 • (253) 588-5281

DATE: _____

TO: _____ Bed: _____
Offender Name

DOC Number _____

FROM: R&D

SUBJECT: WEDDING RING

R&D has received your wedding ring to be issued to you as personal property. Per DOC Policy, wedding rings are only authorized if the offender is married.

Please have your Counselor complete the portion below, and return to R&D staff. As soon as R&D receives verification from your Counselor that you are married, you will be placed on the callout for issuance of your wedding ring.

To Be Filled Out by Counselor:

Verification that the above-named offender is legally married has been confirmed (please check):

☐ Certified copy of marriage certificate received on _____

☐ Copy of marriage certificate (verified from original) located in Offender's Central File

Counselor Name (Print) _____

Counselor Signature _____

Date _____

Counselor: Please return this form to R&D via shotgun envelope. Thank you.

PDU-7430 2 000010

APPENDIX 000065

Francis v. DOC
DEFS-000038

F-11

Date

TO:

FROM: Property Sergeant

SUBJECT: PERSONAL PROPERTY APPEAL

REASON(S) FOR REJECTION:

#1

#2

The facility is in receipt of personal property addressed to you. This property has been rejected in accordance with DOC and MICC 440.000 Personal Property for Offenders. You have been notified of the unauthorized item(s) and indicated you intend to appeal this rejection. In accordance with DOC 450.100 Mail for Offenders, you have ten (10) days from the date of this memo to file your appeal.

Send your appeal directly to the Associate Superintendent – Programs. Your appeal must address the circumstances/reasons you believe the rejected items should be allowed. You must obtain an appeal receipt from Unit staff.

Please use the space below to outline your appeal. Use the back of this form for additional space, if necessary.

TO:

FROM

BRIEF EXPLANATION:

Rev. 3/08

MICC 440.000
Attachment 3

PDU-7430 2 000011

APPENDIX 000066

Francis v. DOC
DEFS-000039

F-12

EXHIBIT G

1
2
3
4
5
6
7 STATE OF WASHINGTON
8 PIERCE COUNTY SUPERIOR COURT

9 SHAWN D. FRANCIS,

10 Plaintiff,

11 v.

12 DEPARTMENT OF CORRECTIONS,
13 a subdivision of the State of
14 Washington,

15 Defendant.

NO. 10-2-10630-3

PLAINTIFF'S FIRST SET OF
INTERROGATORIES AND
REQUESTS FOR PRODUCTION
PROPOUNDED TO DEFENDANT
DEPARTMENT OF CORRECTIONS

AND DEFENDANT'S
OBJECTIONS AND RESPONSES
THERE TO

16 GENERAL OBJECTIONS

17 The Defendant neither agrees nor stipulates to the Plaintiff's definitions or procedure.
18 These interrogatories and requests for production will be answered and supplemented in
19 accordance with Civil Rules 26, 33, and 34. Without waiving such objections, responses are
20 provided as set forth below.

21 INTERROGATORY NO. 1: Please identify (sic) each and every person or persons
22 answering these interrogatories and who provided information for purposes of answering
23 these interrogatories.

24 **ANSWER:** Brett Lorentson, Public Disclosure Specialist.

25
26 PLAINTIFF'S FIRST SET OF
INTERROGATORIES AND REQUESTS
FOR PRODUCTION PROPOUNDED TO
DEFENDANT DEPARTMENT OF
CORRECTIONS AND DEFENDANT'S
OBJECTIONS AND RESPONSES
THERE TO - NO. 10-2-10630-3

1

ATTORNEY GENERAL OF WASHINGTON
Corrections Division
P.O. Box 40116
Olympia, WA 98504-0116
(360) 586-1445

APPENDIX 000068

G-1

1 REQUEST FOR PRODUCTION NO. 1: Please produce each and every document related to
2 your answer to Interrogatory No. 1.

3 **OBJECTIONS:** This request fails to identify the documents being sought with
4 reasonable particularity as required by CR 34. Additionally, this request is overbroad and
5 unduly burdensome as it fails to specify a time frame. Moreover, this request is vague as to the
6 term "related."

7 **RESPONSE:** Without waiving the above objections, there are no responsive
8 documents.

9
10 INTERROGATORY NO. 2: Please identify each and every person or persons involved in
11 acknowledging Plaintiff's June 22 2009 public records request.

12 **ANSWER:** Brett Lorentson, Public Disclosure Specialist.

13
14 REQUEST FOR PRODUCTION NO. 2: Please produce each and every document related to
15 your answer to Interrogatory No. 2.

16 **OBJECTIONS:** This request fails to identify the documents being sought with
17 reasonable particularity as required by CR 34. Additionally, this request is overbroad and
18 unduly burdensome as it fails to specify a time frame. Moreover, this request is vague as to the
19 term "related."

20 **RESPONSE:** Without waiving the above objections, see documents produced
21 at DEFS 2, DEFS 4 – DEFS 5.

22
23 INTERROGATORY NO. 3: Please identify each and every person or persons responsible
24 for responding to Plaintiff's June 22, 2009 public records request.

25 **ANSWER:** Brett Lorentson, Public Disclosure Specialist.

1
2 REQUEST FOR PRODUCTION NO. 3: Please produce each and every document related to
3 your answer to Interrogatory No. 3.

4 **OBJECTIONS:** This request fails to identify the documents being sought with
5 reasonable particularity as required by CR 34. Additionally, this request is overbroad and
6 unduly burdensome as it fails to specify a time frame. Moreover, this request is vague as to the
7 term "related."

8 **RESPONSE:** Without waiving the above objections, see documents produced
9 at DEFS 2, DEFS 4 – DEFS 5.

10
11 INTERROGATORY NO. 4: Please identify each and every DOC job description and
12 classification for each person or persons you've identified as responsible for acknowledging
13 and responding to Plaintiff's June 22, 2009 public records request.

14 **OBJECTIONS:** This interrogatory is compound. Moreover, this interrogatory is
15 not reasonably calculated to lead to the discovery of admissible evidence.

16 **ANSWER:** Without waiving the above objections, see documents produced
17 at DEFS 40 – DEFS 47.

18
19 REQUEST FOR PRODUCTION NO. 4: Please produce each and every document related to
20 your answer to Interrogatory No. 4.

21 **OBJECTIONS:** This request fails to identify the documents being sought with
22 reasonable particularity as required by CR 34. Additionally, this request is overbroad and
23 unduly burdensome as it fails to specify a time frame. Moreover, this request is vague as to the
24 term "related."

1 **RESPONSE:** Without waiving the above objections, see documents produced
2 at DEFS 40 – DEFS 47.

3
4 **INTERROGATORY NO. 5:** Please identify each and every person or persons having
5 knowledge of Plaintiff's June 22, 2009 public records request for which you did not identify
6 in your Answers to these interrogatories.

7 **OBJECTIONS:** This interrogatory assumes facts not in evidence. Moreover, this
8 interrogatory is nonsensical.

9 **ANSWER:** Without waiving the above objections, see below:

- 10 • Lynda West, DOC Public Disclosure Administrative Assistant
11 • Denise Vaughan, DOC Program Manager-Public Disclosure
12 • Tammie Stark, Public Disclosure Secretary, MICC
13 • Brenda Murphy, Public Disclosure Coordinator, MICC
14 • Yolanda Logan, Administrative Assistant 3, MICC
15 • Kenneth Bratten, Correction Captain, MICC

16
17 **REQUEST FOR PRODUCTION NO. 5:** Please produce each and every document related to
18 your answer to Interrogatory No. 5.

19 **OBJECTIONS:** This request fails to identify the documents being sought with
20 reasonable particularity as required by CR 34. Additionally, this request is overbroad and
21 unduly burdensome as it fails to specify a time frame. Moreover, this request is vague as to the
22 term "related."

23 **RESPONSE:** Without waiving the above objections, see documents produced
24 at DEFS 26 - DEFS 27.

1 INTERROGATORY NO. 6: Please identify each and every letter of counseling and letter of
2 reprimand for each of the person or persons you have identified as responsible for
3 acknowledging and then responding to Plaintiff's June 22, 2009 public records request.

4 **OBJECTIONS:** This interrogatory assumes facts not in evidence. Moreover, this
5 interrogatory is compound.

6 **ANSWER:** Without waiving the above objections, no letters of counseling or
7 reprimand have been located for the people identified in response to interrogatory number 5.
8 This answer may be supplemented.

9
10 REQUEST FOR PRODUCTION NO. 6: Please produce each and every document related to
11 your answer to Interrogatory No. 6.

12 **OBJECTIONS:** This request fails to identify the documents being sought with
13 reasonable particularity as required by CR 34. Additionally, this request is overbroad and
14 unduly burdensome as it fails to specify a time frame. Moreover, this request is vague as to the
15 term "related."

16 **RESPONSE:** Without waiving the above objections, there are no responsive
17 documents. This response may be supplemented.

18
19 INTERROGATORY NO. 7: Please identify each and every DOC and MICC policies,
20 directives, or other similar documents prescribing or governing procedures in which DOC
21 and MICC responds to public record requests.

22 **OBJECTIONS:** The requested information is available from a more convenient
23 source as Plaintiff has access to DOC policies.

24 **ANSWER:** Without waiving the above objections, see documents produced
25 at DEFS 48 – DEFS 63.

1
2 REQUEST FOR PRODUCTION NO. 7: Please produce each and every document related to
3 your answer to Interrogatory No. 7.

4 **OBJECTIONS:** This request fails to identify the documents being sought with
5 reasonable particularity as required by CR 34. Additionally, this request is overbroad and
6 unduly burdensome as it fails to specify a time frame. Moreover, this request is vague as to the
7 term "related."

8 **RESPONSE:** Without waiving the above objections, see documents produced
9 at DEFS 48 – DEFS 63.

10
11 INTERROGATORY NO. 8: Please identify each and every document maintained by the
12 DOC pertaining to Plaintiff's June 22, 2009 public records request.

13 **OBJECTIONS:** This interrogatory is vague and confusing as it is unclear what
14 Plaintiff means by the term "pertaining."

15 **ANSWER:** Without waiving the above objections, see documents produced
16 at DEFS 1 – DEFS 39, DEFS 74.

17
18 REQUEST FOR PRODUCTION NO. 8: Please produce each and every document related to
19 your answer to Interrogatory No. 8.

20 **OBJECTIONS:** This request fails to identify the documents being sought with
21 reasonable particularity as required by CR 34. Additionally, this request is overbroad and
22 unduly burdensome as it fails to specify a time frame. Moreover, this request is vague as to the
23 term "related."

24 **RESPONSE:** Without waiving the above objections, see documents produced
25 at DEFS 1 – DEFS 39, DEFS 74.

1
2 INTERROGATORY NO. 9: Please identify any and all other public record requests for
3 which have asked for public records pertaining to any reason and justification for the reason
4 why inmates at MICC are not allowed to retain fans and hot pots in their cells, as well as any
5 policy that may be in place to substantiate such restrictions on these items.

6 **OBJECTIONS:** The requested information is available from a more convenient
7 source as Plaintiff has access to DOC policies. Additionally, requests made by inmates other
8 than Plaintiff are not relevant to this lawsuit.

9 **ANSWER:** Without waiving the above objections, see documents produced
10 at DEFS 1 – DEFS 39.

11
12 REQUEST FOR PRODUCTION NO. 9: Please produce each and every document related to
13 your answer to Interrogatory No. 9.

14 **OBJECTIONS:** This request fails to identify the documents being sought with
15 reasonable particularity as required by CR 34. Additionally, this request is overbroad and
16 unduly burdensome as it fails to specify a time frame. Moreover, this request is vague as to the
17 term “related.”

18 **RESPONSE:** Without waiving the above objections, see documents produced
19 at DEFS 1 – DEFS 39.

20
21 INTERROGATORY NO. 10: Please identify each and every document responsive to
22 Plaintiff's June 22, 2009 public records request.

23 **OBJECTIONS:** This interrogatory is duplicative to interrogatory number 8
24 above.

1 **ANSWER:** Without waiving the above objections, see documents produced
2 at DEFS 1 – DEFS 39, DEFS 64 – DEFS 73, DEFS 75 – DEFS 84.

3
4 REQUEST FOR PRODUCTION NO. 10: Please produce each and every document related
5 to your answer to Interrogatory No. 10.

6 **OBJECTIONS:** This request fails to identify the documents being sought with
7 reasonable particularity as required by CR 34. Additionally, this request is overbroad and
8 unduly burdensome as it fails to specify a time frame. Moreover, this request is vague as to the
9 term “related.”

10 **RESPONSE:** Without waiving the above objections, see documents produced
11 at DEFS 1 – DEFS 39, DEFS 64 – DEFS 73, DEFS 75 – DEFS 84.

12
13 INTERROGATORY NO. 11: Please identify any and all communications between
14 Defendant and Plaintiff pertaining to Plaintiff’s June 22, 2009 public records request.

15 **OBJECTIONS:** This interrogatory is vague and confusing as it is unclear what
16 Plaintiff means by the term “pertaining.”

17 **ANSWER:** Without waiving the above objections, see documents produced
18 at DEFS 2 – DEFS 7, DEFS 28.

19
20 REQUEST FOR PRODUCTION NO. 11: Please produce each and every document related
21 to your answer to Interrogatory No. 11.

22 **OBJECTIONS:** This request fails to identify the documents being sought with
23 reasonable particularity as required by CR 34. Additionally, this request is overbroad and
24 unduly burdensome as it fails to specify a time frame. Moreover, this request is vague as to the
25 term “related.”

1 **RESPONSE:** Without waiving the above objections, see documents produced
2 at DEFS 2 – DEFS 7, DEFS 28.

3
4 **INTERROGATORY NO. 12:** Please identify each and every document that provides
5 reasoning why inmates at MICC are not allowed to retain “hot pots” in their cells.

6 **OBJECTIONS:** This interrogatory assumes facts not in evidence. Additionally,
7 this interrogatory is overbroad and unduly burdensome as it fails to specify a time frame.

8 **ANSWER:** Without waiving the above objections, see documents produced
9 at DEFS 10 – DEFS 24, DEFS 29 – DEFS 39, DEFS 64 – DEFS 73, DEFS 75 – DEFS 84.

10
11 **REQUEST FOR PRODUCTION NO. 12:** Please produce each and every document related
12 to your answer to Interrogatory No. 12.

13 **OBJECTIONS:** This request fails to identify the documents being sought with
14 reasonable particularity as required by CR 34. Additionally, this request is overbroad and
15 unduly burdensome as it fails to specify a time frame. Moreover, this request is vague as to the
16 term “related.”

17 **RESPONSE:** Without waiving the above objections, see documents produced
18 at DEFS 10 – DEFS 24, DEFS 29 – DEFS 39, DEFS 64 – DEFS 73, DEFS 75 – DEFS 84.

19
20 **INTERROGATORY NO. 13:** Please identify each and every document that provides
21 reasoning why inmates at MICC are not allowed to retain “fans” in their cells.

22 **OBJECTIONS:** This interrogatory assumes facts not in evidence. Additionally,
23 this interrogatory is overbroad and unduly burdensome as it fails to specify a time frame.

24 **ANSWER:** Without waiving the above objections, see documents produced
25 at DEFS 10 – DEFS 24, DEFS 29 – DEFS 39, DEFS 64 – DEFS 73, DEFS 75 – DEFS 84.

1
2 REQUEST FOR PRODUCTION NO. 13: Please produce each and every document related
3 to your answer to Interrogatory No. 13.

4 **OBJECTIONS:** This request fails to identify the documents being sought with
5 reasonable particularity as required by CR 34. Additionally, this request is overbroad and
6 unduly burdensome as it fails to specify a time frame. Moreover, this request is vague as to the
7 term "related."

8 **RESPONSE:** Without waiving the above objections, see documents produced
9 at DEFS 10 – DEFS 24, DEFS 29 – DEFS 39, DEFS 64 – DEFS 73, DEFS 75 – DEFS 84.

10
11 INTERROGATORY NO. 14: Please identify each and every document provided to Plaintiff
12 in response to his June 22, 2009 public records request.

13 **ANSWER:** See documents produced at DEFS 10 – DEFS 24, DEFS 29 –
14 DEFS 39.

15
16 REQUEST FOR PRODUCTION NO. 14: Please produce each and every document related
17 to your answer to Interrogatory No. 14.

18 **OBJECTIONS:** This request fails to identify the documents being sought with
19 reasonable particularity as required by CR 34. Additionally, this request is overbroad and
20 unduly burdensome as it fails to specify a time frame. Moreover, this request is vague as to the
21 term "related."

22 **RESPONSE:** See documents produced at DEFS 10 – DEFS 24, DEFS 29 –
23 DEFS 39.

1 INTERROGATORY NO. 15: Please identify the MICC Tier Rep Agenda Items and
2 Response Minutes dated June 6, 2008.

3 **OBJECTIONS:** This interrogatory is vague and confusing as Defendant has no
4 idea how to "identify" the document in question. If Plaintiff is requesting Defendant to
5 produce the document, then this interrogatory is defective in form.

6 **ANSWER:** Without waiving the above objections, see documents produced
7 at DEFS 64 – DEFS 73.

8
9 REQUEST FOR PRODUCTION NO. 15: Please produce each and every document related
10 to your answer to Interrogatory No. 15.

11 **OBJECTIONS:** This request fails to identify the documents being sought with
12 reasonable particularity as required by CR 34. Additionally, this request is overbroad and
13 unduly burdensome as it fails to specify a time frame. Moreover, this request is vague as to the
14 term "related."

15 **RESPONSE:** Without waiving the above objections, see documents produced
16 at DEFS 64 – DEFS 73.

17
18 INTERROGATORY NO. 16: Please identify the MICC Quarterly Tier Representative
19 Meeting Minutes dated November 16, 2007.

20 **OBJECTIONS:** This interrogatory is vague and confusing as Defendant has no
21 idea how to "identify" the document in question. If Plaintiff is requesting Defendant to
22 produce the document, then this interrogatory is defective in form.

23 **ANSWER:** Without waiving the above objections, see documents produced
24 at DEFS 75 – DEFS 84.

1 REQUEST FOR PRODUCTION NO. 16: Please produce each and every document related
2 to your answer to Interrogatory No. 16.

3 **OBJECTIONS:** This request fails to identify the documents being sought with
4 reasonable particularity as required by CR 34. Additionally, this request is overbroad and
5 unduly burdensome as it fails to specify a time frame. Moreover, this request is vague as to the
6 term "related."

7 **RESPONSE:** Without waiving the above objections, see documents produced
8 at DEFS 75 – DEFS 84.

9
10 INTERROGATORY NO. 17: Please explain why the MICC Tier Rep Agenda Items and
11 Responses Minutes, dated June 6, 2008 are not responsive to Plaintiff's June 22, 2009 public
12 records request.

13 **ANSWER:** The document in question appears to be responsive to Plaintiff's
14 June 22, 2009 public records request.

15
16 REQUEST FOR PRODUCTION NO. 17: Please produce each and every document related
17 to your answer to Interrogatory No. 17.

18 **OBJECTIONS:** This request fails to identify the documents being sought with
19 reasonable particularity as required by CR 34. Additionally, this request is overbroad and
20 unduly burdensome as it fails to specify a time frame. Moreover, this request is vague as to the
21 term "related." Furthermore, this request assumes facts not in evidence.

22 **RESPONSE:** Without waiving the above objections, see documents produced
23 at DEFS 64 – DEFS 73.

1 INTERROGATORY NO. 18: Please explain why the MICC Quarterly Tier Representative
2 Meeting Minutes dated November 16, 2007 are not responsive to Plaintiff's June 22, 2009
3 public records request.

4 **ANSWER:** The document in question appears to be responsive to Plaintiff's
5 June 22, 2009 public records request.
6

7 REQUEST FOR PRODUCTION NO. 18: Please produce each and every document related
8 to your answer to Interrogatory No. 18.

9 **OBJECTIONS:** This request fails to identify the documents being sought with
10 reasonable particularity as required by CR 34. Additionally, this request is overbroad and
11 unduly burdensome as it fails to specify a time frame. Moreover, this request is vague as to the
12 term "related." Moreover, this request is vague as to the term "related." Furthermore, this
13 request assumes facts not in evidence.

14 **RESPONSE:** Without waiving the above objections, see documents produced
15 at DEFS 75 – DEFS 84.
16

17 INTERROGATORY NO. 19: Please identify each and every document pertaining to how
18 much DOC time and resources were spent responding to Plaintiff's June 22, 2009 public
19 records request.

20 **OBJECTIONS:** This interrogatory is vague and confusing as it is unclear what
21 Plaintiff means by the term "pertaining."

22 **ANSWER:** Without waiving the above objections, see document produced at
23 DEFS 74.
24
25
26

1 REQUEST FOR PRODUCTION NO. 19: Please produce each and every document related
2 to your answer to Interrogatory No. 19.

3 **OBJECTIONS:** This request fails to identify the documents being sought with
4 reasonable particularity as required by CR 34. Additionally, this request is overbroad and
5 unduly burdensome as it fails to specify a time frame. Moreover, this request is vague as to the
6 term "related."

7 **RESPONSE:** Without waiving the above objections, see document produced at
8 DEFS 74.

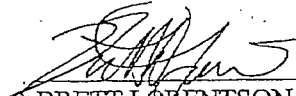
9
10 THE UNDERSIGNED attorney has read the foregoing objections and responses to
11 *PLAINTIFF'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR*
12 *PRODUCTION PROPOUNDED TO DEFENDANT DEPARTMENT OF CORRECTIONS*
13 and they are in compliance with CR 26(g), dated this 31st day of August, 2010.

14 ROBERT M. MCKENNA
15 Attorney General

16
17 ANDREA VINGO, WSBA #26183
18 Assistant Attorney General
19 Corrections Division
20 PO Box 40116
21 Olympia, WA 98504-0116
22 (360) 586-1445

1 I, BRETT LORENTSON, state the following:

2 That I am a Public Disclosure Specialist for the Department of Corrections and I
3 answered the interrogatories on behalf of Defendant Department of Corrections. I have read
4 the *PLAINTIFF'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR*
5 *PRODUCTION PROPOUNDED TO DEFENDANT DEPARTMENT OF CORRECTIONS*
6 *AND DEFENDANT'S OBJECTIONS AND RESPONSES THERETO*, know the contents
7 thereof, and believe the same to be true and correct; dated this 31 day of August, 2010.

8
9 
BRETT LORENTSON

10

11

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26

PLAINTIFF'S FIRST SET OF
INTERROGATORIES AND REQUESTS
FOR PRODUCTION PROPOUNDED TO
DEFENDANT DEPARTMENT OF
CORRECTIONS AND DEFENDANT'S
OBJECTIONS AND RESPONSES
THERETO - NO. 10-2-10630-3

15

ATTORNEY GENERAL OF WASHINGTON
Corrections Division
P.O. Box 40116
Olympia, WA 98504-0116
(360) 586-1445

CERTIFICATE OF SERVICE

I certify that I served *PLAINTIFF'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION PROPOUNDED TO DEFENDANT DEPARTMENT OF CORRECTIONS AND DEFENDANT'S OBJECTIONS AND RESPONSES THERETO* on all parties or their counsel of record as follows:

☒ US Mail Postage Prepaid

SHAWN D. FRANCIS, DOC #749717
MONROE CORRECTIONAL COMPLEX
WASHINGTON STATE REFORMATORY
PO BOX 777
MONROE, WA 98272-0777

I certify under penalty of perjury that the foregoing is true and correct.

EXECUTED this 31st day of August, 2010 at Olympia, WA.


SHAUNNA CARTER

PLAINTIFF'S FIRST SET OF
INTERROGATORIES AND REQUESTS
FOR PRODUCTION PROPOUNDED TO
DEFENDANT DEPARTMENT OF
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APPENDIX 000083

G-16

Public Disclosure Routing Slip

The Public Disclosure Unit (PDU) has received a request for DOC records. Please review the attached request to determine if your location/facility has any responsive records.

Assignment Date: 062609

Tracking #: PDU-7430

Location/Facility: MICC

Requestor's name: Francis

PDC: Murphy

Assigned PDS: Brett (360) 725-8219 bwlorentson@doc1.wa.gov

Records requested: Shawn Francis (749717) has requested: Any and all documents related to any reason and/ or justification for the reason why inmates at MICC are not allowed to retain fans and hot pots in their cells, as well as any policy that may be in place to substantiate such restrictions on these items.

DUE DATE/RESPONSIE TIME:

On or before, July 17, 2009, please provide a copy of the responsive records to the assigned PDS. If this due date does not work, please contact the assigned PDS immediately.

TRACKING TIME: Please compile from all staff at your location.

Use 15 minute increments: _____ hours 15 minutes

RESPONSIVE RECORDS: Identify and coordinate with all appropriate parties at your location/facility.

Check all appropriate boxes for records location that have been searched.

<input type="checkbox"/> Records/Central file	<input type="checkbox"/> Inmate Accounts	<input type="checkbox"/> IMU Staff
<input type="checkbox"/> Hearings Office	<input type="checkbox"/> Property/Mail Room	<input type="checkbox"/> Superintendent
<input type="checkbox"/> I & I Office	<input type="checkbox"/> Shift Security	<input type="checkbox"/> Associates
<input type="checkbox"/> Living Unit Staff	<input type="checkbox"/> Chapel	<input type="checkbox"/> Sgt/Lts
<input type="checkbox"/> Medical Dept/Medical File	<input type="checkbox"/> Inmate Store	<input type="checkbox"/> Grievance Office
<input type="checkbox"/> Maintenance	<input type="checkbox"/> Inmate Visiting	<input type="checkbox"/> Other

☐ All documents gathered. Single sided, unstapled copy of the records AND a completed copy of this routing slip to the assigned PDS: MS: 41118 OR PDU PO Box 41118, Olympia WA 98504

☐ All supporting documents attached and send copy of this routing slip to the assigned PDS. MS: 41118

☐ Date mailed documents to the assigned PDS Date Mailed

NO RECORDS: if you have no responsive records to this request

☐ Notify the PDS named above via e-mail, check the box to the left, and return this routing slip to the assigned PDS at MS 41118. Include all e-mails, noting who was asked for records and had none.

I verify that I have conducted a thorough staff search and I report that I do not have any responsive documents in regards to this request.

Thomas Staxx
Printed Name

Thomas Staxx
Signature

Date Signed

RECEIVED
JUL 15 2008

MCNEIL ISLAND CORRECTIONS CENTER
TIER REP AGENDA ITEMS
June 06 2008

TIER REP AGENDA ITEMS

Attendance:

729396 Gillmere, Richard
720142 Mutton, Michael
871394 Thompson, Robert
267966 Ball, Joseph
737123 Inlong, Howie
948153 Christoph, Michael
874246 Holman, Josh
718086 Harmon, Dennis
855564 Harshbarger, William
281744 Dyer, Richard
273053 Pauley, Timothy

Staff Attendance:

CUS Hughes
CUS Bailey
CPM Fitzpatrick
Food Service Manager IV Lamas

EDUCATION

1. Request out-counts for students who want to stay in class between 3:40 and 5:40.
 - a. This would allow full programming, (Gym, Yard, Hobby etc.)
 - b. Two hours currently wasted
 - c. Supported by education staff and I/M.

Response by Capt. Flynn: No additional inmates will be placed on out counts for increased educational program during the 1600 count. The 1600 count is a count that already has a number of out counts and it is our intent to reduce the number of out-counts that already exist.

PROPERTY

Responses by CUS Bailey

2. Request to use our FANS, Hot Pots, and Stingers
 - a. MICC has many recounts, total recalls, etc''
Requiring I/M to be confined to quarters.
 - b. Fans certainly do not interrupt incoming and outgoing air volume in the cells.

Response: Hot Pots, fans and immersion heaters are not allowed per MICC 440.00. The Superintendent has requested and received permission from Headquarters to not allow them due to issues with power in the units.

3. Request MICC to raise the quarterly package and vendor package maximum weight to 25 lb.

- a. Current weight is 15 lb.
- b. All other property boxes are at 25 lb max.

Response: The 15 lbs. weight on quarterly packages is a Headquarters requirement. We would have to seek an exception to do this and there currently is no reason to.

4. Request increased price cap allowances for T.V., radios, and headphones.
- a. T.V, \$300.00 MAX.
 - b. Radios \$150.00
 - c. Headphones \$50.00 MAX.

Response: Cap allowances for property determined by Headquarters. Tier reps may submit a proposal to the CPM for review.

5. Request clothes hangers:

The following currently list them on their stores; (as of 5-08)
WCCW, PLCCW, MCCCW, AHCC, CRCC, CCCC, SCCC.

Response: Clothes hangers are authorized by policy. Whether they are allowed and how many is up to each facility. The Superintendent has determined coat hangers are not allowed. The panel agreed it is helpful to note other institution practices when drafting proposals. Proposals will be accepted for consideration, petitions will not.

6. Request Choice Distributors be taken off the approved vendor list and replaced with Big-5.

Response: Big 5 is not equipped to mail to facilities and they have refused to send catalogs to other facilities. They do not meet our needs as a vender for this facility.

7. Request J.L. Marcus to be notified of the new policy allowing family support groups purchasing shoes to send to I/M.

Response: J.L. Marcus has been notified of policy changes but continues to reject orders from family members. All of the vendors have been notified twice. We notified J.L. Marcus again and they stated they would send an all staff e-mail to clarify the issue for their employees. J.L. Marcus informed us, if offenders' families have any trouble ordering they should request to speak with a supervisor. Please obtain name and number so R&D can contact the vendor.

8. Request resolution to the two TV's per cell issue.

Response: 2 televisions per cell will require major upgrades from a contractor. The system does not have enough power to supply additional sets and splitters must be provided by a contractor. The Institution is in the process of obtaining estimates.

9. Are personal shirts required to be tucked in now?
If so, I/M request this new policy to be hot-trashed.

Clarification: All personal and state issue shirts are to be tucked in with the exception of sweatshirts and thick lined flannel shirts. Shirts do not have to be tucked in when in the living units and recreation areas, i.e. gym. An Administration bulletin will be sent out to clarify the issue.

RECREATION

Responses by Recreational specialist IV Dan Zoolkoski

10. Request additional staff to be trained to cover Music and Hobby Shop Supervision to eliminate frequent closures.

Response: Additional staff has been requested for recreation but denied by headquarters due to hiring freeze.

11. Request yard to be open for all units during the week at morning and afternoon times.
a. Often less than 30 I/M's at yard at these times
b. Current schedule is not satisfactory to I/M's

Response: The number of inmates in the yard during the day, Monday through Friday, is low. Tier reps are requesting change or 90 day trial of allowing all units to access the yard at those times with a maximum of 250.

12. Request morning yard on Thursday, during incoming transport.

Response: The yard will not be open on Thursday mornings due to staff assisting with incoming and outgoing transports.

13. Request Chapel courtyard to be re-opened as before for prayer and meditation.
a. Install a monitor camera if necessary.

Responses provided by CPM Fitzpatrick: Inmates will not be allowed to use the Chapel courtyard unsupervised due to lack of supervision.

Responses provided by Recreation Specialist IV Dan Zoolkoski:

14. Request separate account for the Arts, Music equipment and Art supplies, with no educations.

Response: This issue will need to be reviewed by Headquarters and reviewed by Dan Zoolkoski.

15. Request that our family support groups be allowed to cover the cost of music equipment and art supplies.

- a. Purchased from and sent from approved vendors.

Response: Policy states that inmates must purchase their own products through the hobby shop supervisor. The hobby shop supervisor will regulate what is being ordered and that those items are being received.

16. Request to continue purchasing A-P approved non-toxic artist supplies that are not labeled flammable.

- a. A-P approve for PRESCHOOL & KINDERGARTEN
- b. No legitimate threat to safety or security [SEE ATTACHMENT]

Response: A product may be labeled non flammable, but it does not mean that it is not flammable. Frequently products will state they are non-toxic but their MSDS will state flammable. The in-house permit clearly states all pens are to be non-flammable. If the product states that it is flammable and the MSDS corresponds, it is unauthorized and an alternated pen needs to be ordered.

17. Request the Chapel end of Blvd. be re-opened for I/M traffic.

- a. Recent closure is unnecessary and unwarranted

Response provided by Capt. Flynn: The Chapel end of the boulevard is out of bounds will not be re-opened to offender traffic.

18. Request permission to bring ice water back from yard to living units.

- a. Officers currently make I/M's dump out ice water.
- b. Cups, pitchers, ice, and water are transparent.
- c. This practice causes increased congestion in units to refill containers.
- d. Less ice available in summer months.

Response provided by Capt. Flynn: All liquid substances will be disposed of prior to leaving the yard. Food Service Manager IV, Mr. Lamas, noted that 10 ice machines have arrived and will be installed in units in order of need.

19. Request violins as additional approved music instrument.

Response provided by Recreation Specialist IV Dan Zoolkoski: This issue is being reviewed within the music program. If it is determined that violins are popular among numerous amounts of inmates, this will be highly considered.

MONEY/ACCOUNTING

Responses provided by Local Business Adviser Curtis Hoffman

20. Request gratuity for students.

- a. Education is of critical importance.
- b. Current situation discourages enrollment in educational programs.

Response: Carpentry students will not be paid while working in class. They were offered positions in the living unit that would work around their class schedule.

21. Request increased pay for class III Porters.

- a. Hours have been cut to 4 (ON CALL).
- b. All other class III jobs are full time.

Response: Pay is set by policy. The reduction in hours was originally put in place to increase Pierce College enrollment. CUS Hughes is currently working on a proposal to review increasing work hours for porters.

22. Request the Inmate Betterment/Welfare account statements to be posted quarterly in the living units.

Response: The Inmate Betterment Fund balance will be posted quarterly. This was agreed on previously but has not happened due to staff shortages in the business office.

23. Request increased spending limit for store purchases.

- a. Current limit is \$75.00/wk, ask for \$100.00.

Response: Executive Team will address increased spending limits for store items.

24. Request approval to use POSTAGE ACCOUNT funds to cover SHIPPING cost when purchasing from vendors.

- a. i.e. Dick Blick 47.95 (art product) REGULAR ACCOUNT
09. 95 (shipping) POSTAGE ACCOUNT

Response: Postage accounts may not be used for shipping personal property purchased through vendors.

FOOD

Answer Provided by Food Service Manager IV Santos Lamas.

25. Request a garden/farm to grow produce to be consumed by I/M's

- a. Real benefits are innumerable.
- b. Excellent job/training.
- c. Improved I/M health.
- d. Decreased tax payer burden.
- e. Island was once self-sufficient.

- f. Much less waste.
- g. Many qualified individuals, Staff and I/M's.

Response: McNeil Island is a federal wildlife preserve. The government will not allow farming/ranching activities on the island. After the composting program becomes operational we may look at creating a garden to use the compost. The possibility of using the old SCC yard was raised but denied as the area is going to be used for other activities.

26. Request quarterly fund raisers.

- a. Monthly would be possible with a delivery truck to each unit, per day.

Response: Quarterly fundraisers pending due to Community Involvement staff vacancy. Request made to use Pierce College baked goods for the Vietnam Veteran's Association fundraiser. Issue will be addressed when position is filled.

27. Request permission to choose between a clothing-shoes quarterly package and one containing food items.

Response provided by CUS Bailey: There is nothing in the policy that does not allow a quarterly food package. Our local OM does not allow this. There would be a work load issue for the mailroom if the OM were to change. MCC allows this and the offenders must order from their trust account. Current practices will continue.

ITEMS 28-30; 32-33 WILL BE ADDRESSED AT A SEPARATE MEETING WITH STORE STAFF

28. Request permission to select PROTIEN POWDER and PROTIEN BARS to be added to over I/M store.

[DENIED AT STORE LEVEL]

STORE [UNRESOLVED OR DENIED ISSUES]

29. Request monthly meetings with store personnel

- a. Only 3 meetings for 2007.
- b. Many issues go unresolved.
- c. Inadequate time to review vendor canteen items, prices, and alternatives.
- d. Inmates want much more input selecting products.

30. Request a current vendor catalog (EEFE SUPPLY and any OTHERS used here) for each living unit including most current prices (wholesale).

- a. This allows I/M's to have input according to policy of what they want on their store.
- b. Also allows Tier-Reps to find better deals.
- c. Allows I/M's opportunity to rotate items.

31. Request blank cassette tapes on store list.

- a. Voice tapes for Latinos who can't write or call Mexico.
- b. General recording from radio broadcasts

Response by CUS Bailey: Blank cassettes are not sold in the offender store. Per policy blank cassettes can be sold. Inmates are not allowed to receive blank cassettes from any vendors other than the offender store. Refer to Business Manager or Carrol Fuller.

Request all personal property electronics be remove from I/M store and allow I/M's to purchase their choices from approved vendors.

- a. Replace these items with consumables for increased store profit margin.
- b. I/M's are currently prohibited by store listings to purchase the \$100.00 wristwatch of their choice from vendors as allowed on PPM.
- c. No legitimate safety or security issue for I/M's purchasing these items from approved vendors.
- d. Better prices, warranties, selection, etc... From vendors.
- e. Except mandatory PPM purchases.

32. Request EDGE GEL shaving gel on our store list.

- a. The following WA. Institutions currently sell EDGE GEL on their store list as of 5-08; AHCC, PLCCW, MCC (REFORMATORY) MCC Twin Rivers, MCC (SOU), CBCC (CLOSE), CBCC (MSC), CRCC.
- b. Many of these are HIGHER custody levels.

33. Request better disposable razors sold in multi-packs same as these WA institutions as of 5-08; AGCC-5 packs etc...

LARCH-10 packs etc... OCC-10 packs etc...
AVCC-5 packs etc... CRCC-10 packs etc...
CCCC-5 packs etc... CBCC (MSC) 10 packs etc...
SCC 10 packs etc...
CBCC [close] 10 packs etc... [SEE ATTACHMENT]

LIVING UNITS

34. Request affirmation to store personal property items on the top shelf of our cell desks (Desk top), acknowledging it's kept clean and orderly, (i.e., books, radio, clock, study materials etc...).

- a. Inmate Orientation handbook allows;
- b. Current misinterpretation of Handbook (policy) has caused confusion about desk shelves.

Response provided by CUS Bailey: The handbook states typewriters may be stored on inmates' desks. Issue will be review by Correctional Unit Supervisors.

35. Request approval to store Secured Items box and or Hobby Box on locker top.
a. Has been acceptable previously.

Response provided by CUS Bailey: Request to store hobby box or scared items box on locker tops will be forwarded to the Executive team.

36. Request more chairs in all units

Response provided by CPM Fitzpatrick: An order for dayroom chairs has been submitted to replace chairs with broken or missing parts. This method is more cost effective than repairing damaged chairs.

37. Request modification of the T.V. Cable contract.

- a. Most I/M's are not happy with the current one.
b. When can a modification be accomplished?

Response by Recreational Specialist IV Dan Zoolkoski: A modification can be reviewed. Any increase to the budget has to be approved by Local Business Advisor Curtis Hoffman.

38. Request priority repair of the ice machine in Upper B unit.

- a. Has been broken for 6 months?

Response Provided by CPM Fitzpatrick: Ice machines have arrived and will be installed in the units, in order of need. The ice machine in B-unit has already been replaced.

39. Request remotes in all units for the new TV's to program in the channels that don't work.

- a. Officers can retain at desk.

Response Provided by CUS Bailey: Sgt. Anderson will be retaining donated remotes. One remote will be provided per station and the offender can access remotes by turning in their rec. card.

MISCELANOUS ITEMS

40. Request movement slips to be available at all call out locations and used when needed.

- a. Much valuable, productive time is currently wasted making I/M's wait until next movement.

Response provide by Capt. Flynn: Movement slips will only be authorized by the Health Services Unit. Request for passes allowed to return from R&D due to high volume of inmates waiting in the tunnel area for movement was discussed. Changes in policy have created an influx in the number of inmates going to R&D, but should subside with time.

41. Request privacy "slats" to be installed in fence at E.F.V. unit.

- a. Visitors feel like they're "on display" to the industrial section when they visit.

Response provided by Capt. Flynn: Privacy slats will be installed to the fence of the EFV trailers. The slats will be 36 inches high.

ITEMS 42 & 43 WILL BE ADDRESSED WITH STORE STAFF AT A DIFFERENT MEETING.

42. ATTACHMENT: SHARPIE.
43. ATTACHMENT: SHAVING GEL/CREAM & RAZORS

Question and Answer Period:

- Q: Who controls the remote control during off site hospital stays? Complaints received about staff watching noisy television shows while the inmate tries to sleep.
A: This issue will be referred to the Public Access Lieutenant for response.
- Q: Why is Correctional Industries' mainline different from general population mainline? Inmates claim general population inmates receive cheese on their sandwiches while compound workers do not.
A: Mr. Lamas stated some substitutions may be made occasionally due to logistics of transporting food, but will look into the claim regarding cheese.
- Q: What can we do about the quality of the sack lunches for outside crews?
A: Check the bag before departing the institution in the morning. Staff is available until 0800 hrs to fix problems with sack lunches.
- Q: Why don't we have monthly meetings with tier representatives and the food manager anymore?
A: Mr. Lamas will resume monthly meetings.
- Q: Why are the kosher meals not frozen anymore?
A: The kosher meals are now prepared by Correctional Industries. They are shelf stable which does not require them to be frozen.
- Q: Why can't we get mouth swabs in lieu of urinalysis testing?
A: The institutions do not currently have the capability of conducting mouth swabs. Some field offices have started using the tests and it may be considered at a later day for prison use.
- Q: Can we have Walkenhorts added to the holiday package list?
A: CUS Bailey will consider revisions to the approved holiday vendors.

- Q: Why do E unit inmates have to take a full day off of work to attend call outs?
A: Due to logistics of moving workers in and out of the institution during the day and staffing shortages most call outs will require workers to miss all or part of a days work. This is consistent with staff appointments.
- Q: Can E unit visiting hours be adjusted to more closely match their work hours?
A: Referred to visit staff
- Q: Why does it take so long for R&D staff to update the record of offender property matrix after property is received?
A: Two staff are responsible for inputting changes to approximately 1200 inmates' matrixes. Recent policy changes have created an influx in the number of inmates receiving packages. This should improve with time. Spread the word to all inmates to keep receipts for all items in case something is confiscated
- Q: Can we have blank tapes for Indeterminate Sentencing Review Board hearings?
A: Please refer to question 31 on page 7.



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
PRISONS DIVISION

MCNEIL ISLAND CORRECTIONS CENTER
PO Box 88900 • MS:WT-01 • Steilacoom, Washington 98388-0900 • (253) 588-5281

QUARTERLY TIER REPRESENTATIVE
MEETING MINUTES

November 16, 2007

Present: CPM Daniel M. Fitzpatrick CUS Cheryl Jorban FSM Santos Lamas	Inmates: Peterson R. 857314 Gillmere R. 729396 Harshbarger W. 855564 Dyer R. 281774 Libby M. 906619 Black M. 957103 Greene T. 705755 Washington R. 877073 Choe H. 727310 Ros 995872 Chambers 743702 Hudnell 941163 Backer 680563 Pennick 792448
Guests: Judi Feliciano	Minutes: Lorene Ross

MINUTES

TOPIC/SPEAKER	DISCUSSION	ACTION
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Santos Lamas, Food Service Manager

1. I thought the food service manager was going to switch out all that processing meat they serve us

Santos Lamas

The FSM stated that they are still in the process of reviewing the issue of processed meat and has submitted this to the Superintendent for review. Many changes to the 4 week menu have been made and are still in the process of making more changes.

2. Trays in chow hall are filthy and stained brown. The chemicals currently used are inadequate. I have offered to clean them personally. Mr. Lamas said "The trays are checked by staff each meal. "The stains are worse now.

Mr. Lamas Stated that staff, continue to fight with removing stains from the food trays because they no longer use bleach or other chemicals they normally use to remove them. They are looking to find something more effective with fewer chemicals.

QUARTERLY TIER REP MEETING
November 16, 2007

TOPIC/SPEAKER	DISCUSSION	ACTION
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Santos Lamas

3. Ill prepared food and portions continue to diminish. No one ensures that we are getting the correct portions. Cookies and potato chips are rumored to be cut. We would like our food spiced up a little which would take little effort on the part of staff and prisoners.

FSM stated that potato chips will be removed from the menu because of the high sodium content and will be replaced with potato salad.

Tier Reps asked if they could bring their own spices; Mr. Lamas stated that MICC is not covered by public laws, only the laws regulated by a restaurant. He also stated that he knows that the seasonings that are provided by MICC staff are safe. He can not say that about what inmates will bring to the dining room. Therefore, he will not authorize them to bring their personal seasonings.

It is important for inmates to communicate with the cook to ensure that you are getting the correct serving portion on the serving line.

If there are any complaints the Food Service Manager has an open door policy.

Santos Lamas

4. Mr. Lamas said the reason we're not getting Ice cream is because we're not asking for it. (Offender reply and request for this agenda item was not completed.)

Mr. Lamas stated that in the past and at this present time, MICC has not been able to serve ice cream because it cannot be maintained at the current temperature of the freezer, the freezer does not reach the required temperature for ice cream

Cheryl Jorban

5. Quarterly food packages allowed from approved vendors, still. Vitamins and dietary supplements. Dieticians in Olympia continue to cut items from our diets. Great for custody level incentive.

Policies regarding quarterly food packages are governed by the Superintendent. Christmas quarterly packages are special or in addition to the regular quarterly packages. Fred Meyer is an approved vendor for vitamins and dietary supplements.

Santos Lamas

6. Can we vote on the Thanksgiving and Christmas meals? Have the kitchen staff make two or three menus and vote.

Mr. Lamas stated that he will ask the Correctional Program Manager to review this issue. He also stated that policy allows staff to prepare certain and different kinds of meals for different occasions during the course of the year.

He also stated that he has no problem meeting with the Tier Reps to discuss the Christmas menu and making a proposal to the superintendent right after Thanksgiving.

QUARTERLY TIER REP MEETING
November 16, 2007

TOPIC/SPEAKER	DISCUSSION	ACTION
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Santos Lamas

7. We would like Peanut Butter and Jelly back on the mainline menu for lunch. The bologna is horrible. We would like tuna, egg salad, cottage cheese, cantaloupe, honeydew melons.

Peanut butter & jelly is not in compliance with the menu; the Food Service Manager would have to meet with the dietician because he does not have the authority to change the menu until they meet.

Santos Lamas

8. We wish to propose an MICC garden to grow produce to be consumed by the offenders here.

The previous Associate Superintendent wanted to put this process in place (garden to grow produce), who is not longer here.

He will follow-up and speak with the present Associate Superintendent (Poteet) regarding this issue.

The Tier Reps asked if they could have whole turkeys for Thanksgiving.

Mr. Lamas explained why they could not cook whole turkeys; that it would be too much to do this for Thanksgiving due to short notice, but he would be willing to do this for Christmas if the cost is reasonable.

Emily Slagle

9. Approved weight lifting offenders wish to purchase: Weight lifting gloves; Ms. Slagle promised to look further into this matter and the issue is still is being reviewed.

Weightlifting gloves are not approved because they are not an approved item on personal property. The recreation department will not entertain purchasing them due to MRSA.

Emily Slagle

10. Emily Slagle filled out and submitted a contract with sports channels with out consulting the population by vote or getting feedback from population.

Contracts can be written without inmate consultation. The previous PUS chose to have inmate input, since staff was on a deadline, they chose the channels and went from there. Again, choosing a 4 sports channels, cost the same as adding one (1) sports channel so it was opted to add 4 because it was the better buy. Otherwise no other channels would have been added. All other channels cost extra.

QUARTERLY TIER REP MEETING
November 16, 2007

TOPIC/SPEAKER	DISCUSSION	ACTION
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Captain Bratten

15. Movements on time, why after a movement back to units do the R & Ms leave the boulevard, which delays our movements back out by 5 to 15 minutes

The only times that the R&M's leave the boulevard is when they are needed to report to the corridor for briefing from the Sergeant prior to a segregation move or other detail, or they have to conduct pat searches down in the compound, when this happens the secondary response transitions from the units to the boulevard, sometimes this takes a few minutes but very rarely 10-15 minutes. We also have to ensure that the boulevard is clear and the unit doors are secured between movements, this has to be coordinated between the control room officer and the corridor officer, this accounts for at least 2-3 minutes.

16. When, on the occasions that the 4:30 PM count is late, what are the changes of having a 6:00 PM movement to the chapel anyway? The sponsors are all there waiting and if those of us who don't want to go eat wanted to go to the service, would this be a possibility?

I don't see this as a problem during weekdays. However, on weekends, we are very short on Officer coverage for the two dining rooms. The Chapel officer is one of the officers that we need to assist with the dining hall security.

17. Yard from 16:30 – dark. Consider extra yard time for the following reasons: Normal movement is often delayed or eliminated for various regularly occurring emergencies. We have no yard at night for 7 months of the year

We have always taken the hours of the day into consideration when opening and closing the yard. In the spring and summer yard gets later with each day and the closer we get to the winter months the yard days have to be shortened. We adjust the closing of the yard based on when it is getting to dark; this is a safety and security issue. This is really no different than when we have fog-line and visibility is poor.

18. Adjustments for cell moves. Can we eliminate the 30 day rule for new arrivals?

This is an issue that would be better taken up with the unit CUS and the unit Sergeant

QUARTERLY TIER REP MEETING
November 16, 2007

TOPIC/SPEAKER	DISCUSSION	ACTION
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Rita Reynoldson

19. Chemicals used in the units for cleaning, are not for the job intended. They are not readily available for us, thereby increasing the chances of germs and viruses. There is no information available to us so the prisoners don't know what to use.

I give the unit all the chemicals that they need to do the job for a one for one exchange. It is the unit staff that is regulating the amount that is in the units. So bring this up with your Unit Sgt and CUS, concerning the proper use of these chemical.

#13 is a degreaser. Used on the showers for body and soap scum.

#19 is a glass cleaner. Use on all windows and mirrors.

#21 is a disinfectant. An all purpose cleaner, only use cold water for the floors.

#70 is a Tub and shower cleaner to use with or without the degreaser.

#71 is a toilet and urinal cleaner

These products are to be on the surface for no less then 10 minmfes to activate the cleaning process. Reapply to rewet the area SCRUB it will not do the job without man power. Let it dry.

Rita Reynoldson

20. What can be done to ensure our chemicals are at full strength

No one is authorized full strength chemicals without filing out an FTCM log each time. This is a time consuming issue that no staff wants to take responsibility for. The Betco chemicals come to you full strength but are diluted through the dispenser. I keep the FTCM log on these items when they leave the shop. Remember that these chemicals are designed to work with water. We are diluting them according to manufactures directions.

QUARTERLY TIER REP MEETING

November 16, 2007

TOPIC/SPEAKER	DISCUSSION	ACTION
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Rita Reynoldson

21. Can we get the bathroom showers professionally cleaned and re-grouted as they are full of mold?

The showers are continually being re-grouted yet the mold will continue to resurface if the scrubbing action is not there. This will be an on going problem and the showers are never allowed to dry thoroughly.

CPM will check on this issue and will work on hiring extra help to get this area cleaned and completed.

CPM stated that there is a budget problem. Supplies are being wasted in the units. He also stated that when he does a walk through inspection of the units; he notices there are many rolls of toilet paper in the restrooms sitting out, not on the roll, which is insanitation. He has asked that this not be done but it continues to be an issue.

The suggested to inmates that they watch the sanitation of the restroom area to ensure that supplies are not wasted.

Cheryl Jorban, Correctional Unit Supervisor (CUS)

22. Update on new shoes vendor and families purchasing them for us.

Mike's Better Shoes is a new approved vendor for purchase of shoes -- ordered and prepaid by offenders from their trust account and sent in directly from the vendor.

The proposal for family/friends to purchase shoes and send in directly from Mike's Better Shoes as an alternate quarterly package is currently being reviewed. No decision yet.

Cheryl Jorban

23, 24, 25, 26
To purchase all personal property items from our approved vendors. Except for a couple items, the PPM allows it. Competitive prices elsewhere. Better selection elsewhere. Longer warranties; Approved vendors for prisons.

Policy states that if items are available on Inmate Store, they cannot be purchased from approved vendors. Questions regarding items available through Inmate Store should be addressed at the Tier Rep meeting with Store.

Cheryl Jorban

27. Holiday food packages, when can we order them? What vendor

The letter from the Superintendent regarding the 2007 Holiday Food Package with all the details was sent out to all units October 31, 2007

QUARTERLY TIER REP MEETING
November 16, 2007

TOPIC/SPEAKER	DISCUSSION	ACTION
<u>Cheryl Jorban</u>		
28. Will they allow foreign language music to be ordered by family/friends and then have them shipped in by the store/vendor? The available music catalogs do not stock a very good selection of foreign music.	Policy states that all personal property not received in a quarterly package must be ordered and prepaid by the offender from his facility trust account. CDs are not allowable items for quarterly packages; therefore, family/friends cannot order them and send them in. More vendors for CDs were recently added to the approved vendor list.	Tier reps are welcome to submit to CUS Jorban any mail-order catalogs for CDs that offer a large selection and are priced within the \$15.00 range limit for consideration as an approved vendor.
<u>Cheryl Jorban</u>		
29. Offenders want both a boom box and a portable walkman radio CD player. Offenders would like to keep our beard/mustache trimmer guides.	Policy allows for only one (1) radio/cassette/CD player, not two (2). Small parts that accompany electric razor or hair trimmer are not allowed.	
<u>Cheryl Jorban</u>		
30. Boxer Briefs are boxers or briefs. Why are they being rejected at R&D?	Policy allows for personal boxer shorts only, not briefs	
<u>Cheryl Jorban</u>		
31. Baseball caps. What is the result of CPM gathering of information on this issue?	Personal baseball caps are not allowed per policy. If there is a need for protection due to health reasons, you must get an HSR, and health services may issue you a hat with a brim.	
<u>Cheryl Jorban</u>		
32. Closed and medium custody have fans, hot pots, raincoats, etc. There is no legitimate reason why we should not have them. Why should we have to earn the right to have them.	Fans and hot pots are not allowed at this institution, per OM 440.000. Use of fans in the cells offsets the central air system. Hot pots are not allowed because each unit has a hot shot. Raincoats are allowed - maximum one (1), clear plastic only.	

QUARTERLY TIER REP MEETING
November 16, 2007

TOPIC/SPEAKER	DISCUSSION	ACTION
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Matthew Cossette

33. Minutes of the Quarterly Tier Rep meetings not accurately shown or posted in the units.

The practice has been to either provide the Tier Reps with a copy of the meeting minutes or to have them posted in the Living Unit. We will endeavor to provide a copy of the meeting minutes to be disseminated to the offenders in the living unit when the meeting minutes are made available.

CPM stated that it is very important that inmates communicate with their counselors and correctional unit supervisors regarding this matter.

George Gilbert

34. The Mexican inmate has not been able to call home since this new phone system was installed. Something really needs to be done to be able to make international calls

This issue is still being reviewed.

George Gilbert

35. The telephones in Lower C-unit are much too quiet. The connection cuts in and out, often to the point of disconnection due to not being able to hear each other. Many repair orders have been submitted with no action.

This issued is being addressed with contractor

Curtis Hoffman

36. What is the current status regarding pay raises?

Pay rises - for what purpose? There is no general pay raise that I'm aware of.

Curtis Hoffman

37. A monthly statement posted for inmate betterment fund, as other institutions do

A statement will be sent to each CUS on 11/14/07, and will be done each month hereafter.

QUARTERLY TIER REP MEETING
November 16, 2007

TOPIC/SPEAKER	DISCUSSION	ACTION
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Brenda Montgomery Linn

38. How come medical is not willing to do test for men that are age specific; especially with our processed food diet?

Ms. Montgomery Linn stated that MICC is in the process of implementing a new program on the "Metabolic Health Diet". Inmates can request this diet by sending a Kite to Ann Lachey. Inmates may ask to see her and she will be able to answer any other questions that you have.

George Gilbert

39. Is the Dept. aware of all the problems our phone provider has had in other states. Where inmate families are filing lawsuits?

This is a question I do not have the answer too.

a. St. not providing users with any account statements to show how many calls are made. No way to monitor our accounts.

The person who is receiving the call should be the person setting up the account. This person should make contact with GTL and request a billing statement.

b. Charges a \$5.00 fee every time our family put money on account

c. No recourse for call disconnecting! Be charged \$3.50 for two minutes is crazy.

It's my understand all calls are \$3.50 if they not on the pre-paid system. However, if they have a pre-paid account they are \$3.15 per call. All calls carry a flat rate meaning no additional charges

CPM

40. I heard but have not seen a memo that they are going to remove all radios from work areas? Is this true?

Unaware of any memo pertaining to this issue

George Gilbert

41. Alarm clocks, can we get a digital on inmate store

The institution will loan alarm clocks to each inmate until they can purchase their own.

QUARTERLY TIER REP MEETING
November 16, 2007

TOPIC/SPEAKER	DISCUSSION	ACTION
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Diane Burton

47. Visitors want to purchase items made by inmates that are displayed at the visit room here.

Policy 540.105
E. Superintendents at facilities having offender hobby programs will develop procedures for the sale of offender hobby items to Department staff or the public. These procedures will comply with DOC 800.010 Ethics and the Washington State Ethics Board regulations.

For further information on this please see Policy 540.105-E&F

CPM

48. There are 57 speakers in the ceiling in our unit yet we cannot hear the announcements at period movement.

This issue is still being review; will get an update for next meeting.

49. Prison channel for callouts (including medical), new policy updates, menu, upcoming events, visitation, etc.

This is a Software issue, still being reviewed

Sgt. Burton

50. Will they allow two personal T.V.s per cell?

CPM stated this issued has already been discussed.

CUS will be assigned to review this issue further.

EXHIBIT H

RECEIVED

MAR - 7 2011

ATTORNEY GENERAL'S OFFICE
CORRECTIONS DIVISION

STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

SHAWN D. FRANCIS,

Plaintiff,

v.

DEPARTMENT OF CORRECTIONS,
a subdivision of the State of
Washington,

Defendant.

NO. 10-2-10630-3

PLAINTIFF'S SECOND SET OF
INTERROGATORIES AND
REQUESTS FOR PRODUCTION
PROPOUNDED TO DEFENDANT
DEPARTMENT OF CORRECTIONS

AND DEFENDANT'S
OBJECTIONS AND RESPONSES
THERE TO

GENERAL OBJECTIONS

The Defendant neither agrees nor stipulates to the Plaintiff's definitions or procedure. These interrogatories and requests for production will be answered and supplemented in accordance with Civil Rules 26, 33, and 34. Without waiving such objections, responses are provided as set forth below.

INTERROGATORY NO. 1: Please identify OPERATIONAL MEMORANDUM (DEPARTMENT OF CORRECTION POLICY) #MICC 440.000 - PERSONAL PROPERTY FOR OFFENDERS which has a revision date of 3/1/09. (This is an OPERATIONAL MEMORANDUM used at the McNeil Island Corrections Center (MICC)).

PLAINTIFF'S SECOND SET OF
INTERROGATORIES AND REQUESTS
FOR PRODUCTION PROPOUNDED TO
DEFENDANT DEPARTMENT OF
CORRECTIONS AND DEFENDANT'S
OBJECTIONS AND RESPONSES
THERE TO - NO. 10-2-10630-3

1

ATTORNEY GENERAL OF WASHINGTON
Corrections Division
P.O. Box 40116
Olympia, WA 98504-0116
(360) 586-1445

APPENDIX 000106

H-1

1 **OBJECTIONS:** This interrogatory is vague and confusing as it is unclear how
2 Defendant is supposed to "identify" the document in question.

3
4 REQUEST FOR PRODUCTION NO. 1: Please produce each and every document related to
5 your answer to Interrogatory No. 1.

6 **OBJECTIONS:** This request fails to identify the documents being sought with
7 reasonable particularity as required by CR 34. Additionally, this request is overbroad and
8 unduly burdensome as it fails to specify a time frame. Moreover, this request is vague as to the
9 term "related."

10 **RESPONSE:** Without waiving the above objections, see documents produced
11 at DEFS 86 – DEFS 95.

12
13 INTERROGATORY NO. 2: Please explain why the MICC OPERATIONAL
14 MEMORANDUM #440.000 – PERSONAL PROPERTY FOR OFFENDERS which has a
15 revision date of 3/1/09 is not responsive to Plaintiff's June 22, 2009 public records request.

16 **ANSWER:** The document in question appears to be responsive to Plaintiff's
17 June 22, 2009 public records request.

18
19 REQUEST FOR PRODUCTION NO. 2: Please produce each and every document related to
20 your answer to Interrogatory No. 2: (sic).

21 **OBJECTIONS:** This request fails to identify the documents being sought with
22 reasonable particularity as required by CR 34. Additionally, this request is overbroad and
23 unduly burdensome as it fails to specify a time frame. Moreover, this request is vague as to the
24 term "related."

1 **RESPONSE:** Without waiving the above objections, see documents produced
2 at DEFS 86 - DEFS 95.

3
4 THE UNDERSIGNED attorney has read the foregoing objections and responses to
5 **PLAINTIFF'S SECOND SET OF INTERROGATORIES AND REQUESTS FOR**
6 **PRODUCTION PROPOUNDED TO DEFENDANT DEPARTMENT OF CORRECTIONS**
7 and they are in compliance with CR 26(g), dated this 28th day of February, 2010.

8 ROBERT M. MCKENNA
9 Attorney General

10
11 ANDREA VINGO, WSBA #26183
12 Assistant Attorney General
13 Corrections Division
14 PO Box 40116
15 Olympia, WA 98504-0116
16 (360) 586-1445

17 I, DENISE VAUGHAN, declare the following under the penalty of perjury:

18 That I am the Public Records Officer and Compliance Manager for the Washington State
19 Department of Corrections and I answered the foregoing interrogatories on behalf of Defendant
20 Department of Corrections. I have read the **PLAINTIFF'S SECOND SET OF**
21 **INTERROGATORIES AND REQUESTS FOR PRODUCTION PROPOUNDED TO**
22 **DEFENDANT DEPARTMENT OF CORRECTIONS AND DEFENDANT'S**
23 **OBJECTIONS AND RESPONSES THERETO**, know the contents thereof, and believe the
24 same to be true and correct; dated this 28th day of February, 2011.

25 DENISE VAUGHAN

26 PLAINTIFF'S SECOND SET OF
INTERROGATORIES AND REQUESTS
FOR PRODUCTION PROPOUNDED TO
DEFENDANT DEPARTMENT OF
CORRECTIONS AND DEFENDANT'S
OBJECTIONS AND RESPONSES
THERETO - NO. 10-2-10630-3

3

ATTORNEY GENERAL OF WASHINGTON
Corrections Division
P.O. Box 40116
Olympia, WA 98504-0116
(360) 586-1445

CERTIFICATE OF SERVICE

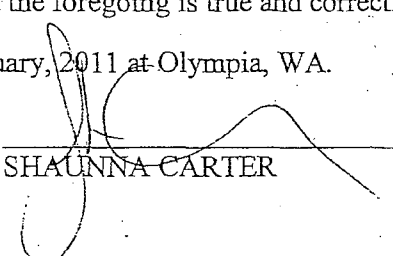
I certify that I served *PLAINTIFF'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION PROPOUNDED TO DEFENDANT DEPARTMENT OF CORRECTIONS AND DEFENDANT'S OBJECTIONS AND RESPONSES THERETO* on all parties or their counsel of record as follows:

☒ US Mail Postage Prepaid

SHAWN D. FRANCIS, DOC #749717
WASHINGTON CORRECTIONS CENTER
PO BOX 900
SHELTON, WA 98584

I certify under penalty of perjury that the foregoing is true and correct.

EXECUTED this 28th day of February, 2011 at Olympia, WA.


SHAUNNA CARTER

PLAINTIFF'S SECOND SET OF
INTERROGATORIES AND REQUESTS
FOR PRODUCTION PROPOUNDED TO
DEFENDANT DEPARTMENT OF
CORRECTIONS AND DEFENDANT'S
OBJECTIONS AND RESPONSES
THERETO - NO. 10-2-10630-3



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

McNeil Island Corrections Center

**OPERATIONAL
MEMORANDUM**

APPLICABILITY
STAFF/OFFENDER

REVISION DATE
3/1/09

PAGE NUMBER
1 of 6

NUMBER
MICC 440.000

TITLE
PERSONAL PROPERTY FOR OFFENDERS

REVIEW/REVISION HISTORY:

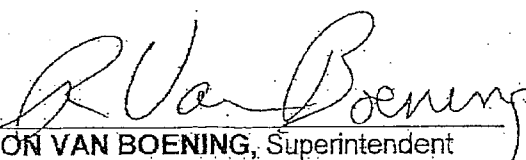
Policy Effective/Revision Date

Revised: 7/14/97	9/29/95	Ad Bulletin: 5/5/03	12/27/99
Revised: 8/1/99	4/15/96	Ad Bulletin: 11/4/03	12/27/99
Ad Bulletin: 12/1/00	12/27/99	Ad Bulletin: 8/5/04	5/24/04
Ad Bulletin: 2/16/01	12/27/99	Ad Bulletin: 9/12/05	7/28/05
Ad Bulletin: 6/20/01	12/27/99	Ad Bulletin: 3/24/06	7/28/05
Ad Bulletin: 8/14/01	12/27/99	Ad Bulletin: 8/4/06	7/28/05
Ad Bulletin: 10/18/01	12/27/99	Revised: 11/15/06	11/15/06
Ad Bulletin: 10/21/01	12/27/99	Ad Bulletin: 6/13/07	11/15/06
Revised: 11/12/01	12/27/99	Revised: 3/05/08	3/5/08
Ad Bulletin: 1/22/02	12/27/99	Reviewed: 11/17/08	3/5/08
Ad Bulletin: 12/23/02	12/27/99	Revised: 3/1/09	3/1/09


SUMMARY OF REVISION/REVIEW:

I.C.2. - Identify approved vendors.
VII.B. - Identify the internal appeal process.
X.A. - Identify the facility requirements.
XI.B. - If this is new practice for the facility, identify procedure.
XIV.A. - Identify the written procedures. This means if offenders property was inventoried during the year, it does not need to be inventoried. Property of offenders who have not had property inventoried within a year's time need to have an inventory completed.

APPROVED:


RON VAN BOENING, Superintendent

2-13-2009
Date Signed

	STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS		APPLICABILITY STAFF/OFFENDER	
	McNeil Island Corrections Center		REVISION DATE 3/1/09	PAGE NUMBER 2 of 6
	OPERATIONAL MEMORANDUM		TITLE PERSONAL PROPERTY FOR OFFENDERS	

REFERENCES:

DOC 440.000 Personal Property for Offenders

OPERATIONAL MEMORANDUM:

- I. DOC 440.000 Personal Property for Offenders, revision date 3/1/09, will serve as the Operational memorandum for McNeil Island Corrections Center (MICC), as well as the procedures outlined below.
- II. The Associate Superintendent of Programs is responsible for managing the requirements of this Operational Memorandum.
- III. Any personal property not specifically authorized by DOC Policy, MICC Operational Memorandum, or issued by MICC will be handled as contraband and infractions will be written as appropriate.

PROCEDURES

- I. Allowable Property
 - E. Offenders may not possess more than \$125 in consumable offender store items.
 - F. Offenders may purchase items authorized in the MAPPM and not available for purchase through the offender store. Offenders must prepay all vendor purchases.
 1. Offenders may receive one approved vendor package per month. The list of approved vendors is posted in each living unit.
 - G. See MICC 450.120 Packages for Offenders for information regarding Quarterly/Vendor packages.
- V. Special Housing Units



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS

McNeil Island Corrections Center

**OPERATIONAL
MEMORANDUM**

APPLICABILITY
STAFF/OFFENDER

REVISION DATE
3/1/09

PAGE NUMBER
3 of 6


NUMBER
MICC 440.000

TITLE
PERSONAL PROPERTY FOR OFFENDERS

- C. Offenders housed in the MICC clinic may be permitted certain items of personal property. It is the offender's responsibility to send a request for these items to the Health Care Manager or to the Correctional Unit Supervisor of his living unit.
- D. Offenders housed in the clinic or participating in the Extended Family Visits for a period not exceeding 24 hours may elect to have their property secured in their locker in the living unit or in the storage lockers in the unit property room.
- E. Offenders placed in segregation will immediately have any personal property in their possession inventoried by segregation staff.
 - 1. Copies of completed inventories will be forwarded to the offender's living unit for storage.
 - 2. All personal property will be returned to the offender's living unit for storage. The property will be inventoried by the unit staff and placed in the unit storage area.

VI. Unauthorized Property

- B. The following types of clothing are prohibited:
 - 6. Turtle neck clothing
 - 7. Pants or shorts with pockets located in other than traditional (front and rear pocket) areas
 - 8. Handkerchiefs other than white are prohibited. Bandanas are unauthorized except in accordance with DOC 560.200 Religious Freedom
 - 9. Reversible Clothing
- C. Any device designed to receive text messages including watches, pagers, and cellular telephones will be considered unauthorized property and will be disposed of in accordance with DOC 440.000 Personal Property for Offenders.
- D. Electric fans
- E. Footwear having zippered-type closures instead of traditional shoelaces, concealed or hidden areas, and those that are a shoe within a shoe

	STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS McNeil Island Corrections Center	APPLICABILITY STAFF/OFFENDER			
		REVISION DATE 3/1/09	PAGE NUMBER 4 of 6	NUMBER MICC 440.000	
		TITLE PERSONAL PROPERTY FOR OFFENDERS			
OPERATIONAL MEMORANDUM					


- F. Pants/shorts with a lanyard or hammer loop inside or outside the garment
- G. Attachments to hair/beard trimmers
- H. Sweatpants with a zippered ankle
- I. Hobby craft items made by another offender
- J. Coats and/or jackets with more than four pockets
- K. Immersion heaters
- L. Hot pots

VII. Restriction of Incoming and Outgoing Personal Property

- B. Each facility will develop an internal appeal process to address the needs of the facility. The final decision will come from the Superintendent/designee.
 - 1. The offender will have ten (10) days from the date listed on Property Disposition Form DOC 21-139 to file his appeal in writing. Using the Personal Property Appeal Form (Attachment 3), he will send the appeal directly to the Associate Superintendent of Program for a final decision. He must obtain an appeal receipt from unit staff.

VIII. Property Inventory

- C. Living unit staff will conduct a property inventory whenever staff takes possession of an offender's personal property. Staff members will complete the MICC Property Inventory Checklist (Attachment 1) in addition to DOC 05-062 Record of Offender Personal Property. The original MICC Property Inventory Checklist will be placed in the offender's living unit files with a copy to Receiving and Discharge (R&D). DOC 05-062 Record of Offender Personal Property will be completed and copies distributed in the following manner:
 - 1. Original – R&D;
 - 2. One copy in the property box;
 - 3. One copy to the offender;
 - 4. One copy in the living unit files; and
 - 5. One copy on the outside of the property box.

	STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS			APPLICABILITY STAFF/OFFENDER		
	McNeil Island Corrections Center			REVISION DATE 3/1/09	PAGE NUMBER 5 of 6	NUMBER MICC 440.000
	OPERATIONAL MEMORANDUM			TITLE PERSONAL PROPERTY FOR OFFENDERS		

- a. Boxes found without a copy of DOC 05-062 on the outside of the box will:
 - 1) Immediately be inventoried by unit staff in the presence of the unit Sergeant and prepare a new DOC 05-062; and
 - 2) Be properly secured

X. Property Storage


- A. Offenders will store personal property per facility requirements.
 1. Personal property for offenders will not exceed the capacity of the locker, desk shelves, and authorized storage space, with the exception of typewriters, musical instruments, and televisions.
 2. Temporary storage of an offender's personal property is provided in the living unit's storage area. Living unit rules describe authorized storage space for offender personal property.
 3. Offenders are required to secure their personal property with locks sold through the offender store. When an offender is determined to be indigent, their account will be debited.

XI. Disposition Options

- H. Records staff will notify the Hobby Shop Supervisor of pending releases from the facility so chemicals and other materials can be properly disposed of.
- I. When possible, valuable items such as electrical appliances and musical instruments will have seals placed on them. If the seals are tampered with, the item will be confiscated as contraband and infractions written as appropriate.

XIV. Compliance Audits

- A. Each facility will establish written procedures to ensure each offender's property is inventoried at least once annually. Excess or unauthorized property will be disposed of in accordance with this policy.
 1. Each living unit will maintain an Inventory Compliance Audit Log. Staff will complete property compliance audits on ten percent of the unit's

 STATE OF WASHINGTON DEPARTMENT OF CORRECTIONS McNeil Island Corrections Center OPERATIONAL MEMORANDUM	APPLICABILITY STAFF/OFFENDER		
	REVISION DATE 3/1/09	PAGE NUMBER 6 of 6	NUMBER MICC 440.000
	TITLE PERSONAL PROPERTY FOR OFFENDERS		

population each month. Each offender will have once compliance audit annually. Compliance audits will also be completed each time an offender moves from one living unit to another.

2. Excess or unauthorized property will be disposed of in accordance with DOC 440.000 Personal Property for Offenders.

ATTACHMENTS:

MICC Property Inventory Checklist (Attachment 1)
 MICC Property Inventory Procedure (Attachment 2)
 Personal Property Appeal (Attachment 3)

DOC FORMS: (See Appendix)

**McNEIL ISLAND CORRECTIONS CENTER
PROPERTY INVENTORY CHECKLIST**

INMATE NAME _____ DOC # _____ HOUSING UNIT/RM # _____

ITEM	YES	NO
Was the offender present during pack-up?		
Were all large items marked with the correct DOC number?		
If not, was the item confiscated?		
If confiscated, was a Search and Evidence Report prepared?		
Was a proper description of the property given? (Size, color, brand name, serial and/or model number, condition, i.e., torn clothes, frayed electrical cord, scratched, used, etc)?		
After pulling the inmate's personal property, was it stored in a secure area?		
If so, when and where?		
Were 5 copies of the inventory sheet(s) made and signed by two staff (one staff and inmate, if inmate was present during pack-up)?		
Were the boxes properly marked?		
Was an infraction written for confiscated items, if discovered?		
Were the personal property inventory sheets used in accordance with the property matrix?		
Was property left unsecured?		
If unsecured, did you so indicate on the top of the form?		
Was the number of boxes indicated on the inventory form and box label?		
Box # _____ Room # _____		
Is one copy of the inventory sheet inside the box, one on the outside of the box, one sent to the Sergeant, one sent to R&D, and one to the inmate?		
Are the address book and reading glasses, if any, at the top of the box?		
Was the inventory left from a prior shift?		
Was the inmate's cellmate present when property was removed from the room for proper identification?		
If the inmate has a Sacred Items box, was the Sacred Items Box inspected for contraband?		
If not, why?		
The Sacred Items box was placed in packing box # _____		
If so, by whom?		
Did the inmate take his own property to R&D with an officer escorting him?		
<i>ONLY THE CUS OR HIGHER CAN AUTHORIZE A SEARCH OF THE BOX, AFTER IT IS PACKED AND SEALED</i>		

Staff Name (Printed)	Staff Signature	Date
----------------------	-----------------	------

Inmate Name and DOC # (Printed)	Inmate Signature	Date
---------------------------------	------------------	------

MICC 440.000 Attachment 1

PROPERTY INVENTORY PROCEDURE

(ATTACHMENT TO OM)

- Immediately secure all offender property once it is known the offender will no longer have possession (Segregation placement, Health Services Admission, Emergency Medical Trip, Escape) of their personal property (to prevent loss or theft).
- Obtain **Individual Property Matrix** (IPM = computer version of *Master Property File*) printed prior to inventory.
- Ensure two staff perform the inventory when offender is not present (decreases liability, increases accuracy and accountability during the inventory process).
- Utilizing *IPM* identify all of the offender's personal property, secure it for inventory. Identify all items listed on IPM as 'packed' or 'missing'.
- If an offender is placed in Segregation, ensure that the property is returned to the unit and secured with the property from the offender's room (make entry in unit log and inform verbally with the oncoming shift if unable to accomplish prior to end of shift). Initiate section A of DD form and attach to the unit copies of the completed inventory for the Unit Sergeant's review. Utilizing 05-062, Record of Offender Property, list (record) all offender personal property which has been verified according to IPM. Utilize (1) one 05-062 form to accurately list and describe the contents of each box. Close out the form when no other items will be added to this box (mark the box and 05-062, as box #1). Continue inventorying the property in this manner until completed. A numbered succession (box count) will be established, making for easy tracking of each box and the contents. The 05-062 must include the "reason for inventory" at the top of the form (e.g. Transfer, Seg Placement, Release). Staff must ensure to, date, sign and print their name on all forms. Electronic appliances (radios/boom - box style not walk man style, televisions, typewriters, musical instruments) must be packaged separately and cannot not be packed into boxes with other offender personal property. Electronic appliances must be listed on DOC form 05-062, however they must **NOT** factor into the overall box count of personal property boxes. Musical instruments must be forwarded to the Music Room for shipping (not R&D). DOC 05-062, has a separate section to list musical equipment.
- Staple together and forward the original(s) of DOC for-refs) 05-062, with the completed IPM to R&D.
- Securely tape each box completely closed (do not store open).
- Utilize DOC form 21-329, *Property ID Label*, to mark each box inventoried. DOC form 05-062, must reflect the offender's name, DOC number, date, location (e.g. Transfer to the new facility; Seg placement the new housing assignment, Release to)-
- Offender Personal Property (*non-consumable*) not listed on IPM is contraband. Confiscate and record on DOC form 05-384, *Search Report*. Attach the completed 05-364 form; to confiscated personal property (paper bag/box) and bring it to R&D (after hours secure the property on the bench in the tunnel outside R&D's entrance). *Hazardous*, dangerous, illegal, or serious

contraband must be processed in accordance with DOC 420.375, *Contraband Management*, and will not be included with any contraband brought to R&D. Religious Property, Utilizing 05-062, record the "presence" of a 'sacred items boxes' (if found). The offender's first and last name and DOC number must be on the outside of the box. The handling, inspection and searches of these boxes will be performed consistent with DOC 560.210, *Religious Freedom for Offenders*, and DOC 420.320, *Searches of Facilities*.

SPECIAL NOTE:

Ensure to distribute all forms in accordance to the distribution designation listed on the bottom of each form.

STATE ISSUED CLOTHING:

Do not pack State Issued Clothing in with personal property. Each offender should have a "STATE ISSUE TRANSPORT BAG". When offenders transfer from one facility to another it is required that there state issued clothing accompany them. If the offender's "STATE ISSUE TRANSPORT BAG" cannot be located at the time of pack-up place into a separate chain box label with the offender's name and number then CLEARLY mark the box STATE ISSUE. Complete an inventory of the state issued clothing *secured for* inventory. Record the inventory on a separate DOC form 05-062, mark the top of the *form* "STATE ISSUE CLOTHING" (do not include this inventory sheet/box in the overall box count). Attach completed form to personal property forms and forward to R&D. Secure the State Issued Clothing in same area as the offender's personal property.

Date

TO:

FROM: Property Sergeant

SUBJECT: PERSONAL PROPERTY APPEAL

REASON(S) FOR REJECTION:

#1

#2

The facility is in receipt of personal property addressed to you. This property has been rejected in accordance with DOC and MICC 440.000 Personal Property for Offenders. You have been notified of the unauthorized item(s) and indicated you intend to appeal this rejection. In accordance with DOC 450.100 Mail for Offenders, you have ten (10) days from the date of this memo to file your appeal.

Send your appeal directly to the Associate Superintendent – Programs. Your appeal must address the circumstances/reasons you believe the rejected items should be allowed. You must obtain an appeal receipt from Unit staff.

Please use the space below to outline your appeal. Use the back of this form for additional space, if necessary.

TO:

FROM

BRIEF EXPLANATION:

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STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

SHAWN D. FRANCIS,

Plaintiff,

v.

DEPARTMENT OF CORRECTIONS,
a subdivision of the State of
Washington,

Defendant.

NO. 10-2-10630-3

DEFENDANT'S RESPONSE TO
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

Defendant, Department of Corrections (the Department or DOC), by and through its attorneys of record, ROBERT M. MCKENNA, Attorney General, and ANDREA VINGO, Assistant Attorney General, submit the following response to Plaintiff's Motion for Summary Judgment.

I. STATEMENT OF FACTS

This is a Public Records Action (PRA) filed by the Plaintiff, inmate Shawn Francis, against the Department of Corrections (the Department).

Mr. Francis submitted a public records request to the Department dated June 19, 2009, which was received on June 22, 2009. Exhibit 1, Declaration of Brett Lorentson¹ ¶ 4. This request sought the following records: "Any and all documents related to any reason and/or

¹ At the time of this filing the Defendant was unable to obtain a signed declaration of Brett Lorentson, as he is out of the office until July 5, 2011. Once the signed Declaration is received it will be forwarded to the court for inclusion into the record.

1 justification for the reason why inmates at the McNeil Island Corrections Center are not
2 allowed to retain fans and hot pots in their cells, as well as any policy that may be in place to
3 substantiate such restrictions on these items also.” *Id.* This request was assigned tracking
4 number PDU-7430. *Id.*

5 Mr. Lorentson, a Public Disclosure Specialist, responded to Mr. Francis’ request via
6 letter on July 1, 2009, informing him that additional time was necessary to complete his
7 request. Exhibit 1, ¶ 5. Mr. Francis was informed that he would receive further response
8 within 20 business days, on or before July 30, 2009. *Id.*

9 On July 2, 2009, Mr. Lorentson sent another letter to Mr. Francis informing him that 15
10 pages of responsive documents had been located. Exhibit 1, ¶ 6. These 15 pages consisted of a
11 copy of DOC Policy 440.000, Personal Property for Offenders, effective March-1, 2009, and
12 Administrative Bulletin AB-09-009 for the same policy, effective March 23, 2009, as well as
13 attachments one and three to the policy. *Id.*

14 Mr. Lorentson received a letter from Mr. Francis dated July 8, 2009 requesting that the
15 responsive records be e-mailed. Exhibit 1, ¶ 7. On July 10, 2009, pursuant to Mr. Francis’
16 request, Mr. Lorentson e-mailed the responsive records. Exhibit 1, ¶ 8. Mr. Lorentson
17 informed Mr. Francis in the e-mail that his request was now closed. *Id.*

18 On July 21, 2010, Mr. Lorentson sent another letter to Mr. Francis informing him that
19 an additional 11 pages of responsive documents had been located and he enclosed a copy of
20 said documents for his records. Exhibit 1, ¶ 10. These 11 pages consisted of a copy of
21 McNeill Island Corrections Center Operational Memorandum 440.000, Personal Property for
22 Offenders, effective May 10, 2010, as well as attachments to the operational memorandum.
23 These records were provided to Mr. Francis at no charge. *Id.* Mr. Lorentson again informed
24 Mr. Francis in this letter that his request was now closed. *Id.*

25 Mr. Francis did not file an appeal with the Department regarding this request. Exhibit
26 1, ¶ 11.

1 Mr. Francis filed this action on June 30, 2010. Mr. Francis propounded discovery on
2 the Department on two separate occasions. In response, the Department produced minutes
3 from a tier representative meeting and an updated Operation Memorandum that were
4 responsive to Mr. Francis' original request. Exhibit 1, ¶ 12-15. The last of these documents
5 were produced on March 10, 2011. *Id.*

6 II. STATEMENT OF ISSUES

- 7 1. Whether the Department violated the PRA by failing to timely provide all
8 records responsive to Mr. Francis' request.
- 9 2. If the court finds a violation of the PRA, whether the *Yousoufian V* factors
support a penalty at the bottom of the statutory range.

10 III. EVIDENCE RELIED UPON

11 Defendant relies upon this motion with the attached declaration of Brett Lorentson,
12 including attachments.

13 IV. ARGUMENT

14 A. Standard For Summary Judgment

15 Summary judgment is appropriate "if the pleadings, depositions, answers to
16 interrogatories, and admissions on file, together with affidavits, if any, show that there is no
17 genuine issue as to any material fact and that the moving party is entitled to a judgment as a
18 matter of law." CR 56(c). All reasonable inferences from the evidence must be resolved
19 against the moving party, and summary judgment should only be granted if reasonable people
20 could reach but one conclusion. *Detweiler v. J.C. Penney Cas. Ins. Co.*, 110 Wn.2d 99, 108,
21 751 P.2d 282 (1988). At the summary judgment stage of an action under the Act, the trial
22 court may rely on declarations submitted by the agency demonstrating the adequacy of the
23 search for requested records. *Neighborhood Alliance of Spokane County v. County of Spokane*,
24 153 Wn.App. 241, 224 P.3d 775 (2009).

1 **B. Compliance Under The Public Records Act**

2 The Public Records Act (PRA or “the Act”) provides for the disclosure of a large
3 portion of documents maintained by Washington’s government agencies. RCW 42.56 *et seq.*
4 The Department is one such public agency that must comply with the Act and is required to
5 establish and publish applicable policies and procedures. RCW 42.56.040.

6 A public record includes “any writing containing information relating to the conduct of
7 government or the performance of any governmental or proprietary function prepared, owned,
8 used, or retained by any state or local agency” RCW 42.56.010 (2). Once a request is
9 received by an agency, the agency must respond within five business days. RCW 42.56.520.
10 In that response, the agency must provide the record, provide a reasonable estimate of how
11 long it will take to gather responsive documents, or deny the public records request in whole or
12 in part. *Id.*

13 **C. The Department Admits That It Violated The PRA**

14 The Department admits that it violated the PRA by failing to timely provide Mr.
15 Francis all the responsive documents in its possession at the time of his request. According to
16 the Department’s calculation, the violation occurred for 626 penalty days.

17 **D. Imposition Of A Per Day Sanction At The Bottom Of The Range Is Appropriate**

18 If the court finds a violation of the PRA, this court should impose a per day sanction
19 at the bottom of the \$5 to \$100 range. RCW 42.56.550(4); *Yousoufian v. Office of Ron*
20 *Sims*, 168 Wn.2d 444, 229 P.3d 735, (2010) (*Yousoufian V*). The Washington Supreme
21 court reestablished a 16-factor nonexclusive guide of mitigating and aggravating factors to
22 be used by trial courts in assessing PRA penalties. *Id.* The Court established the following
23 mitigating factors:

- 24 1. A lack of clarity in the PRA request;
- 25 2. The agency’s prompt response or legitimate follow-up inquiry for
26 clarification;

1 3. The agency's good faith, honest, timely, and strict compliance with all
2 PRA procedural requirements and exceptions;
3 4. Proper training and supervision of the agency's personnel;
4 5. The reasonableness of any explanation for noncompliance by the
5 agency;
6 6. The helpfulness of the agency to the requestor; and
7 7. The existence of agency systems to track and retrieve public records.
8 *Yousoufian V*, 168 Wn.2d at 467-8. The Court established the following aggravating
9 factors:

- 10 1. A delayed response of the agency, especially where time is of the
11 essence;
- 12 2. Lack of strict compliance by the agency with all the PRA procedural
13 requirements and exceptions;
- 14 3. Lack of proper training and supervision of the agency's personnel;
- 15 4. Unreasonableness of any explanation for noncompliance by the agency;
- 16 5. Negligent, reckless, wanton, bad faith, or intentional non-compliance
17 by the agency;
- 18 6. Agency dishonesty;
- 19 7. The public importance of the issue to which the request is related,
20 where the importance was foreseeable to the agency;
- 21 8. Any actual personal economic loss to the requestor resulting from the
22 agency's misconduct, where the loss was foreseeable to the agency; and
23 9. A penalty amount necessary to deter future misconduct by the agency,
24 considering the size of the agency and the facts of the case.

25 *Id.* In establishing this guide, the Court specifically rejected the argument that a penalty
26 calculation should begin at the midpoint of the range. *Yousoufian V*, at 467. Here, the
facts underlying Mr. Francis' claims heavily weigh in favor of the *Yousoufian V* mitigating
factors, and against the aggravating factors.

1 **1. The Nature And Circumstances Of Plaintiff's Claims Support The**
2 ***Yousoufian V* Mitigating Factors**

3 **a. Clarity Of The Request**

4 The Department agrees that Mr. Francis' request was clear.

5 **b. Training, Supervision, And Tracking Of PRA Requests**

6 The Department has adopted policies and procedures for responding to public records
7 requests. In doing so, the Department has ensured that each of the individuals who respond to
8 public records requests receive training, including Mr. Lorentson. Mr. Lorentson has had 14
9 hours of training on Public Disclosure Updates, two hours of training provided by the Attorney
10 General's Office on public records, and one hour of training on metadata, track changes,
11 electronic redaction, and ethical obligations. Exhibit 1, ¶ 2. He has also received over three
12 years of on-the-job training. *Id.* Moreover, per his training, Mr. Lorentson assigned Mr.
13 Francis' request a tracking number. Exhibit 1, ¶ 3. This kind of training, supervision and
14 tracking supports a mitigation of penalties.

15 **c. Good Faith Compliance And Helpfulness To The Requestor**

16 Throughout the request process, the Department has faithfully corresponded to Mr.
17 Francis and has made every effort to look for additional documents. This is evidenced by the
18 amount of correspondence provided as attachments to the declaration submitted on behalf of
19 the Department. Exhibit 1, Attachments A-H. Furthermore, when additional responsive
20 documents were discovered, the Department provided them at no cost to Mr. Francis. Exhibit
21 1, ¶ 13 and 15. This is in no way a situation where an agency ignored a requestor, or chose not
22 to respond to his correspondence after a certain period, as was the case in *Yousoufian V*.

23 //

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1 2. **The Nature And Circumstances Of Plaintiff's Claims Do Not Support The**
2 ***Yousoufian V* Aggravating Factors**

3 a. **Delayed Responses, Lack Of Strict Compliance, Unreasonable**
4 **Explanation For Non-Compliance**

5 First and foremost, the Department did not refuse to provide records. In fact, the
6 Department provided at least some of the records in a timely manner, two sets before this
7 action was filed and two sets after. See Exhibit 1.

8 b. **Lack Of Proper Training And Supervision**

9 As argued previously, the Department has developed extensive policies, training and
10 supervision regarding public records disclosure, including a unit dedicated solely to the
11 production and review of such records. Considering this, lack of proper training and
12 supervision cannot be considered as an aggravating factor.

13 c. **Negligence, Recklessness, Bad Faith, Dishonest, Or Intentional**
14 **Noncompliance**

15 There are no allegations that the Department acted intentionally, dishonestly,
16 recklessly, or in bad faith. Even negligence is questionable, considering the tracking of and
17 number of responses to Mr. Francis' request.

18 d. **Public Importance Of The Request And Economic Loss To The**
19 **Requestor**

20 Mr. Francis' request for inmate-related items is of little, if any, importance to the
21 public. Any failure to receive these records did no economic damage --- in fact, failure to
22 receive these records was actually a boon to Mr. Francis as it allowed for him to file a
23 profitable action under the Act. Thus, this aggravating factor is inapplicable.

24 e. **Need To Deter Future Misconduct**

25 The Department of Corrections received approximately 6,730 public records requests in
26 2007, approximately 11,130 in 2008, and approximately 12,900 in 2009. Exhibit 1, ¶ 16. The
27 Department employs approximately 8,000 statewide, however; only 13 staff are assigned to the

1 Public Disclosure Unit. Exhibit 1, ¶ 18. This means that each full time employee in the Public
2 Records Unit responded to about 1,000 public records requests. See Exhibit 1. And since
3 2008 Mr. Francis has made enough public records requests, 15, to occupy one full time public
4 disclosure employee for a week. On the whole, the Department is doing everything in its
5 power to comply with the Act. The burden of a large per day penalty would not deter future
6 non-compliance --- it would only reduce the shrinking budget for the unit tasked with
7 responding to future requests.

8 **3. Penalties Should Be Assessed Separately: One Per Day Penalty For Before**
9 **This Action Was Filed And Another For After**

10 *Yousoufian III* gave this court discretion to assess, or not assess, separate penalties
11 based on the nature of the PRA violation. *Yousoufian v. Office of Ron Sims*, 114 Wn. App.
12 836, 60 P.3d 667 (2003) (*Yousoufian III*), reversed on other grounds, 152 Wn.2d 421, 98
13 P.3d 463 (2004). In *Yousoufian III*, the Court of appeals considered the appropriateness of
14 separating out a multi-part PRA request so as to assess penalties fairly. *Id.* The Court
15 found that the trial court's categories were not arbitrary, but were based on reasonable criteria
16 and provided the court with a middle ground between the extreme penalty requested by
17 *Yousoufian* and the minimal penalty sought by the County. In fact, given our above
18 conclusions, *the trial court would have been within its discretion to simply award an amount*
19 *within the statutory range for each day that each of Yousoufian requests went unanswered.*
20 *Id.*, at 849 (emphasis added). In this way, this court is not required to "triple penalize" the
21 Department for each day that certain responsive documents were not provided as Mr. Francis
22 suggests. Instead this court should look at and impose penalties based on the time period
23 before this action was filed and the time period after.

24 Here, Mr. Francis waited for an entire year to file this action, which this court is
25 urged to consider when assessing penalties. Mr. Francis was told that his PRA request was
26 closed in July 2009. Exhibit 1, ¶ 8. At that time, he did not communicate further with the

1 Department to ask if further responsive documents existed. While not required by the Act,
2 Mr. Francis did not take advantage of the Department's internal appeal process. Instead,
3 Mr. Francis waited until a few days before the one year statute of limitations ran to file this
4 action. If Mr. Francis truly was interested in obtaining the documents requested, he would
5 not have waited almost a year to put the Department on notice. The only conclusion that
6 can be reached from Mr. Francis' inaction is that he was looking for a monetary windfall.
7 As such, the time between Mr. Francis' initial request and his filing of this action---353
8 days---should be penalized at a rate of \$5 per day.

9 As for the remainder of the penalty period---273 days---the *Yousoufian V* factors
10 suggest that a penalty of \$10 per day is appropriate. In *Yousoufian V*, the only case that
11 gives any guidance to appropriate per day penalties, the Washington State Supreme Court
12 considered an egregious situation where King County failed to provide documents for four
13 years, failed to communicate with the requestor, and intentionally withheld and exempted
14 numerous documents. *Yousoufian V*, 168 Wn.2d 444. There, despite such actions, the
15 Court upheld a \$45 per day penalty. *Id.* Clearly, the facts discussed here do not rise to this
16 level, and as such, a \$10 per day penalty is appropriate.

17 As such, a total penalty of \$4,495 is appropriate under the facts of this case.

18 V. CONCLUSION

19 For the reasons stated above, the Department asks that the Court impose penalties at
20 the bottom of the range pursuant to *Yousoufian V*.

21 RESPECTFULLY SUBMITTED this 18th day of July, 2011.

22 ROBERT M. MCKENNA
23 Attorney General

24 ANDREA VINGO, WSBA #26183
25 Assistant Attorney General
26 Corrections Division

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7 STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

8 SHAWN D. FRANCIS,

9 Plaintiff,

10 v.

11 DEPARTMENT OF CORRECTIONS,
12 a subdivision of the State of
13 Washington,

14 Defendant.

NO. 10-2-10630-3

DECLARATION OF BRETT
LORENTSON

15 I, BRETT LORENTSON, make the following declaration:

16 1. I am a Public Disclosure Specialist for the Washington State Department of
17 Corrections (DOC) in Tumwater, Washington. I have worked for DOC for approximately four
18 years. As a Public Disclosure Specialist, one of my job duties is to retrieve and/or maintain
19 records kept by the agency in the ordinary course of business.

20 2. I am familiar with the Public Records Act and have received many hours of
21 training on the Act itself, including 14 hours of training on Public Disclosure Updates, two
22 hours of training provided by the Attorney General's Office on public records, and one hour of
23 training on metadata, track changes, electronic redaction, and ethical obligations. I have also
24 received over three years of on-the-job training.
25
26

DECLARATION OF BRETT
LORENTSON - NO. 10-2-10630-3

1

ATTORNEY GENERAL OF WASHINGTON
Corrections Division
P.O. Box 40116
Olympia, WA 98504-0116
(360) 586-1445

APPENDIX 000129

1 3. I am familiar with the Plaintiff in this lawsuit, Shawn Francis, and have
2 knowledge of the public records request he made of DOC assigned tracking number PDU-
3 7430.

4 4. Mr. Francis submitted a public records request to DOC dated June 19, 2009,
5 which was received by DOC on June 24, 2009. This request sought the following records:
6 "Any and all documents related to any reason and/or justification for the reason why inmates at
7 the McNeil Island Corrections Center are not allowed to retain fans and hot pots in their cells,
8 as well as any policy that may be in place to substantiate such restrictions on these items also."
9 This request was assigned tracking number PDU-7430. Attached to this declaration as
10 Attachment A is a true and correct copy of said request.

11 5. I responded to Mr. Francis' request via letter on July 1, 2009, informing him
12 that additional time was necessary to complete his request. Mr. Francis was informed that he
13 would receive further response from me within 20 business days, on or before July 30, 2009.
14 Attached to this declaration as Attachment B is a true and correct copy of said letter.

15 6. On July 2, 2009, I sent another letter to Mr. Francis informing him that 15 pages
16 of responsive documents had been located. These 15 pages consisted of copies of DOC Policy
17 440.000, Personal Property for Offenders, effective March 1, 2009; Administrative Bulletin
18 AB-09-009 for the same policy, effective March 23, 2009; as well as attachments one and three
19 to the policy. In this same letter I provided him with the total amount due in order to receive
20 the responsive documents. Attached to this declaration as Attachment C is a true and correct
21 copy of said letter.

22 7. I received a letter from Mr. Francis dated July 8, 2009 requesting that the
23 responsive records be e-mailed to the following e-mail address: dodieco@hotmail.com.
24 Attached to this declaration as Attachment D is a true and correct copy of said letter.

25 8. On July 10, 2009, pursuant to Mr. Francis' request, I e-mailed the responsive
26 records to dodieco@hotmail.com. Attached to this declaration as Attachment E is a true and

1 correct copy of said e-mail. I informed Mr. Francis in this e-mail that his request was now
2 closed.

3 9. When initially gathering the responsive documents, I was informed by the
4 McNeil Island Corrections Center (MICC) that they had no responsive documents. However,
5 after providing the responsive documents to Mr. Francis, it was discovered that MICC did in
6 fact have an operational memorandum that was responsive.

7 10. On July 21, 2010, I sent a letter to Mr. Francis informing him that an additional
8 11 pages of responsive documents had been located and I enclosed a copy of said documents
9 for his records. These 11 pages consisted of a copy of MICC Operational Memorandum
10 440.000, Personal Property for Offenders, effective May 10, 2010, as well as attachments to
11 the operational memorandum. These records were provided to Mr. Francis at no charge. I
12 again informed Mr. Francis in this letter that his request was now closed. Attached to this
13 declaration as Attachment F is a true and correct copy of said letter.

14 11. Mr. Francis did not file an appeal regarding this request.

15 12. On or about August 26, 2010, I became aware that additional responsive
16 documents existed.

17 13. On September 3, 2010, I sent a letter to Mr. Francis informing him that an
18 additional 20 pages of responsive documents had been located and I enclosed a copy of said
19 documents for his records. These 20 pages consisted of copies of the MICC Tier Rep Agenda
20 Items dated June 6, 2008 and the MICC Quarterly Tier Representative Meeting Minutes dated
21 November 16, 2007. These records were provided to Mr. Francis at no charge. Attached to
22 this declaration as Attachment G is a true and correct copy of said letter.

23 14. On or about February 28, 2011, I became aware that additional responsive
24 documents existed.

25 15. On March 10, 2011, I sent a letter to Mr. Francis informing him that an
26 additional 30 pages of responsive documents had been located and I enclosed a copy of said

1 documents for his records. These 30 pages consisted of copies of MICC Operational
2 Memorandum 440.000, Personal Property for Offenders, with the following effective dates:
3 April 19, 2010, January 15, 2010, December 15, 2009, June 26, 2009, and March 1, 2009.
4 These records were provided to Mr. Francis at no charge. Attached to this declaration as
5 Attachment H is a true and correct copy of said letter.

6 16. The Department of Corrections received approximately 6,730 public records
7 requests in 2007, approximately 11,130 public records requests in 2008, approximately 12,900
8 public records requests in 2009, and approximately 7,500 public records requests in 2010.

9 17. Since January 1, 2008, Mr. Francis has submitted a total of 15 public records
10 requests.

11 18. The Department of Corrections employs approximately 8,000 men and women
12 statewide. However, only 13 staff are assigned to the Public Disclosure Unit.

13 I declare under the penalty of perjury of the laws of the State of Washington that the
14 foregoing is true and correct to the best of my knowledge.

15 SIGNED this 5 day of July, 2011, at Tumwater, Washington.

16 
17 BRETT LORENTSON

ATTACHMENT A

APPENDIX 000133

RECEIVED

JUN 24 2009

PUBLIC DISCLOSURE UNIT

June 19, 2009

Department of Corrections
Public Disclosure Unit
PO BOX 41118
Olympia, WA 98504-1118

Re: Public Records Request Pursuant to RCW 42.56 et seq.

Dear Public Records Officer:

This is a public records disclosure request pursuant to RCW 42.56 et seq. Pursuant to RCW 42.56.520, I am requesting a response and/or production of the records listed below within five (5) business days of your receipt of this letter. The requested records can be provided to me at the address below. If there is a fee for the cost of copying the requested records, please let me know as soon as possible so that I can remit payment.

I am requesting the following records:

Any and all documents related to any reason and/or justification for the reason why inmates at the McNeil Island Corrections Center are not allowed to retain fans and hot pots in their cells, as well as any policy that may be in place to substantiate such restrictions on these items also.

ATTACHMENT A

pg. 1 of 2

Francis v. DOC
DEFS-000006

Thank you for your timely response. I look forward to hearing from you.

Sincerely,



Shawn Francis

Shawn Francis

Doc # 749717

McNeil Island Corrections Center

Po Box 881000, Unit: A-422-1

Steilacoom, WA 98388

ATTACHMENT B

APPENDIX 000136



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
P.O. Box 41100 • Olympia, Washington 98504-1100

July 1, 2009

Shawn Francis, DOC 749717
A4221
MICC
PO Box 881000
Steilacoom WA 98388

Dear Mr. Francis:

I am in receipt of your public disclosure request received June 22, 2009. You have requested any and all documents related to any reason and/ or justification for the reason why inmates at MICC are not allowed to retain fans and hot pots in their cells, as well as any policy that may be in place to substantiate such restrictions on these items. For your future reference, this request has been assigned public disclosure tracking number, PDU-7430.

I will proceed to identify and gather responsive records according to my interpretation of your request. If my interpretation of your request is incorrect in any way, please forward clarification.

You can expect further response in 20 days, on or before July 30, 2009. If you have any questions in the interim, please feel free to contact me at the address below.

Sincerely,

Brett W. Lorentson, Public Disclosure Specialist
Department of Corrections
PO Box 41118
Olympia WA 98504

BL:PDU-7430
cc: File

ATTACHMENT B

"Working Together for SAFE Communities"



Francis v. DOC
DEFS-000005

APPENDIX 000137

ATTACHMENT C

APPENDIX 000138



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
P.O. Box 41100 • Olympia, Washington 98504-1100

July 2, 2009

Shawn Francis, DOC 749717
A4221
MICC
PO Box 881000
Steilacoom WA 98388

Dear Mr. Francis:

According to my interpretation of your request (PDU-7430), I have identified and gathered 15 pages responsive to your request. You have requested any and all documents related to any reason and/ or justification for the reason why inmates at MICC are not allowed to retain fans and hot pots in their cells, as well as any policy that may be in place to substantiate such restrictions on these items. Total fees related to your request are:

Copy fee (15 x \$.20 per page)	\$3.00
Postage	\$1.22
TOTAL	\$4.22

Upon receipt of payment in the form of check or money order made payable to the Department of Corrections in the amount of \$4.22, I will mail the requested documents to you. Please send your payment to my attention at the address below and include the PDU number assigned to this request (PDU-7430).

Please note that all records sent to incarcerated inmates are subject to Department mailroom policy guidelines. Your payment for copies of records requested under the Public Records Act does not ensure that these same records will be allowed into a secure prison facility (Livingston v. Cedeno, 186 P.3d 1055 (Wash. 2008)). Should you wish to have records mailed to a third party on your behalf, please provide the correct name and mailing address along with the quoted payment. Otherwise, the responsive records will be sent to your attention.

If you choose not to pursue this public disclosure request within thirty (30) days following the date of this letter, this request will be closed. If you have any questions, please contact me at the address below.

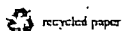
Sincerely,

Brett W. Lorentson, Public Disclosure Specialist
Department of Corrections
PO Box 41118
Olympia WA 98504

BL:PDU-7430
cc: File

ATTACHMENT C

"Working Together for SAFE Communities"



Francis v. DOC
DEFS-000004

ATTACHMENT D

APPENDIX 000140

July 8, 2009

Brett W. Lorentson, Public Disclosure Specialist
Department of Corrections
Po Box 41118
Olympia, WA 98504

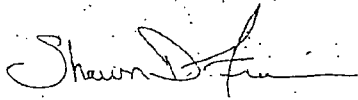
Dear Mr. Lorentson,

I am writing to you in regards to my public disclosure request (PDU-7430). Since my request is under 50 pages of responsive documents I am requesting you to e-mail the 15 pages of responsive documents to the following e-mail address:

dodieco@hotmail.com

Thank you for your prompt response.

Sincerely,



Shawn Francis, Doc 749717
Meneil Island Corrections Center
Po Box 881000; Unit: A-422-1
Steilacoom, WA 98388

ATTACHMENT D

Francis v. DOC
DEFS-000003

ATTACHMENT E

APPENDIX 000142

Lorentson, Brett W. (DOC)

From: Lorentson, Brett W. (DOC)
Sent: Friday, July 10, 2009 2:55 PM
To: 'dodieco@hotmail.com'
Subject: DOC Public Disclosure Request: PDU-7430, Francis
Attachments: PDU-7430, Francis-Responsive Records.pdf

July 10, 2009

Shawn Francis, DOC 749717
dodieco@hotmail.com

Dear Mr. Francis:

Per your request, I am forwarding 15 pages responsive to your request, PDU-7430, via email. You requested any and all documents related to any reason and/or justification for the reason why inmates at MICC are not allowed to retain fans and hot pots in their cells, as well as any policy that may be in place to substantiate such restrictions on these items. Since all responsive records have been provided, this request is closed.

We are providing these records to you in accordance with the Public Records Act. By making agency documents available to you, the Department is not responsible for your use of the information or for any claims or liabilities that may result from your use or further dissemination.

Sincerely,

Brett W. Lorentson, Public Disclosure Specialist
Department of Corrections
PO Box 41118
Olympia WA 98504

BL:PDU-7430

cc: File



PDU-7430,
Francis-Responsive R.

ATTACHMENT E

Francis v. DOC
DEFS-000002

ATTACHMENT F

APPENDIX 000144



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
P.O. Box 41100 • Olympia, Washington 98504-1100

July 21, 2010

Shawn Francis, DOC 749717
WSR — CH1 / A122L
MCC
PO Box 777
Monroe WA 98272

Dear Mr. Francis:

I have enclosed 11 additional responsive pages to your public disclosure request, PDU-7430. The records include MICC Operational Memorandum: MICC 440.000 - Personal Property for Offenders. You requested any and all documents related to any reason and/or justification for the reason why inmates at MICC are not allowed to retain fans and hot pots in their cells, as well as any policy that may be in place to substantiate such restrictions on these items. Since all responsive records have been provided, this request is closed.

We are providing these records to you in accordance with the Public Records Act. By making agency documents available to you, the Department is not responsible for your use of the information or for any claims or liabilities that may result from your use or further dissemination.

If you have any questions regarding these records, please contact me at the address below.

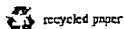
Sincerely,

Brett W. Lorentson, Public Disclosure Specialist
Department of Corrections
PO Box 41118
Olympia WA 98504

BL:PDU-7430
Enclosure
cc: File

"Working Together for SAFE Communities"

ATTACHMENT F



Francis v. DOC
DEFS-000028

ATTACHMENT G

APPENDIX 000146



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
P.O. Box 41100 • Olympia, Washington 98504-1100

September 3, 2010

Shawn Francis, DOC 749717
WSR — CH1 / A122L
MCC
PO Box 777
Monroe WA 98272

Dear Mr. Francis:

I have enclosed 20 additional pages responsive to your public disclosure request, PDU-7430. The records include MICC Tier Rep minutes and agenda items dated November 16, 2007 and June 6, 2008. You requested any and all documents related to any reason and/ or justification for the reason why inmates at MICC are not allowed to retain fans and hot pots in their cells, as well as any policy that may be in place to substantiate such restrictions on these items.

Please note that pages 4 and 11 of the enclosed November meeting minutes are missing and department staff are unable to locate a complete original. We are providing these records to you in accordance with the Public Records Act. By making agency documents available to you, the Department is not responsible for your use of the information or for any claims or liabilities that may result from your use or further dissemination. This request is closed.

If you have any questions regarding these records, please contact me at the address below.

Sincerely,

Brett W. Lorentson, Public Disclosure Specialist
Department of Corrections
PO Box 41118
Olympia WA 98504

BL:PDU-7430
Enclosure(s)
cc: File

"Working Together for SAFE Communities"



ATTACHMENT G

ATTACHMENT H

APPENDIX 000148



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
P.O. Box 41100 • Olympia, Washington 98504-1100

March 10, 2011

Shawn Francis, DOC 749717
L / LB64U
AHCC
PO Box 1899
Airway Heights WA 99001

Dear Mr. Francis:

This letter is in follow up to previous response regarding your public records request, PDU-7430. You requested any and all documents related to any reason and/or justification for the reason why inmates at MICC are not allowed to retain fans and hot pots in their cells, as well as any policy that may be in place to substantiate such restrictions on these items.

I have previously made available DOC 440.000, Personal Property for Offenders, revision date 3/01/09 and MICC 440.000, Personal Property for Offenders with a revision date of 5/10/10. Please find enclosed this same operational memorandum with various revision dates. The records include:

- MICC Operation Memorandum MICC 440.000 Personal Property for Offenders, Revision date 3/1/09
- MICC Operation Memorandum MICC 440.000 Personal Property for Offenders, Revision date 6/26/09
- MICC Operation Memorandum MICC 440.000 Personal Property for Offenders, Revision date 12/15/09
- MICC Operation Memorandum MICC 440.000 Personal Property for Offenders, Revision date 1/15/10
- MICC Operation Memorandum MICC 440.000 Personal Property for Offenders, Revision date 4/19/10

We are providing these records to you in accordance with the Public Records Act. By making agency documents available to you, the Department is not responsible for your use of the information or for any claims or liabilities that may result from your use or further dissemination.

"Working Together for SAFE Communities"

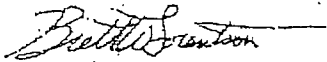


ATTACHMENT H

Francis, DOC749717
March 10, 2011
Page 2

If you have any questions regarding these records, please contact me at the address below.

Sincerely,



Brett W. Lorentson, Public Disclosure Specialist
Department of Corrections
PO Box 41118
Olympia WA 98504

BL:PDU-7430

Enclosure

cc: File

EXPEDITE
No Hearing Is Set
☒ Hearing Is Set
Date: July 15, 2011
Time: 9:00 a.m.
Judge: John R. Hickman

RECEIVED

JUL 11 2011

ATTORNEY GENERAL'S OFFICE
CORRECTIONS DIVISION

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

SHAWN D. FRANCIS,)	
Plaintiff,)	NO. 10-2-10630-3.
)	
v.)	PLAINTIFF'S REPLY TO
)	DEFENDANT'S RESPONSE TO
DEPARTMENT OF CORRECTIONS,)	PLAINTIFF'S MOTION FOR
Defendant.)	SUMMARY JUDGMENT
)	

Plaintiff, Shawn D. Francis, appearing pro se, submits the following reply to the Defendant's Response to Plaintiff's Motion for Summary Judgment.

I. INTRODUCTION

The defendant, in response to Plaintiff's Motion for Summary Judgment, admits and concedes to violating the Public Records Act (PRA), in this matter. Furthermore, in response to Plaintiff's Requests for Admissions, the defendant makes numerous other concessions. Therefore, this Court is requested to determine penalties and costs to be awarded to Plaintiff.

In its response, the defendant muddles various facts of the case, and as such, Plaintiff takes this opportunity to address these factual

PLAINTIFF'S REPLY TO
DEFENDANT'S RESPONSE - 1

APPENDIX 000151

inaccuracies, and to clarify the record.

The defendant is mistaken when it claims that it provided two sets of responsive records in a timely manner. Defendant's Response, at 2-3, & 7. The defendant distorts the timeline of events.

On July 10, 2009, Mr. Lorentson provided one set of random, unresponsive documents to Mr. Francis, via e-mail. The documents provided bore no relevance to the information requested by Mr. Francis.

On June 30, 2010, Mr. Francis filed this action. It wasn't until almost a full month later, on July 21, 2010, that Mr. Lorentson saw fit to provide more documents. However, these documents were also non-responsive.

The other factual inaccuracies, which are mis-characterized by the defendant will be addressed throughout the remainder of this reply.

II. EVIDENCE RELIED UPON

Included with this Reply, as attachment A, is the Second Declaration of Shawn D. Francis, along with exhibits.

III. ARGUMENT

A. The Defendant Concedes Liability

The defendant admits that it violated the PRA in this matter, and is therefore, not being challenged. Defendant's Response, at 4; see also Second Decl. of Francis, Exhibit I-4 (Admissions No. 4).

B. The Defendant's Assessment of Mitigating/Aggravating Factors Is Factually Distorted

The defendant, in its response, attempts to make excuses justifying why they failed to comply with the law under the Public Records Act. The defendant refers to these excuses as "mitigating factors". Furthermore, the defendant attempts to shift the burden, that is statutorily imposed upon them, and place it onto the Plaintiff.

1. Defendant's Mitigating Factors Fail To Persuade

a. Clarity Of The Request

Although the defendant concedes that Plaintiff's request was clear, the defendant seems to mistakenly assert this as a mitigating factor. Defendant's Response, at 6. However, under Yousoufian V.¹ a "lack of clarity in the PRA request" (emphasis added) is considered mitigating, thereby suggesting that if the request is clear, then it is considerably aggravating. Thus, this fails as a mitigating factor.

b. Training, Supervision, And Tracking Of PRA Requests

The defendant suggests that assigned Public Disclosure Specialist - Brett Lorentson, is adequately trained, however, they do not address the competency of the other numerous agency employees who also participated in responding to Plaintiff's records request. Defendant's Response, at 6; Second Decl. of Francis, Exhibits J-1

¹ 168 Wn.2d 444, at 467-68, 229 P.3d 735 (2010)

and also J-2; see also First Decl. of Francis, Exhibit G-17, attached to Plaintiff's Motion for Summary Judgment.

According to these records, it is clear that at least three (3) other people, besides Mr. Lorentson, participated in actually responding to Plaintiff's request - 1) Public Disclosure Coordinator, Brenda Murphy; 2) Public Disclosure Secretary, Tammie Stark; and 3) Yolanda D. Logan. Defendant also acknowledged in discovery that at least six people, besides Mr. Lorentson, had knowledge of Plaintiff's request. First Decl. of Francis, Exhibit G-4 (Interrogatory No. 5). These records show that Plaintiff's request was simply shuffled down the ranks, through at least 3 people, before landing on Yolanda Logan's desk. Between the 7 individuals responding to Plaintiff's request, less than 15 minutes were spent searching for responsive records. This clearly warrants consideration for numerous aggravating factors, especially in light of the fact that not one of these individuals searched any of the known 18 locations where records were available. First Decl. of Francis, Exhibit G-17, attached to Summary Judgment Motion.

These outlined facts disprove the Defendant's claim that they have "ensured" proper training of agency staff, however, it does suggest that department staff are well experienced at simply delegating responsibility. Thus, this mitigating factor is inapplicable.

c. Good Faith Compliance Was Not Displayed
By DOC

The defendant claims that "every effort" was made in responding

to Francis' request. Defendant's Response, at 6. This claim is easily dismantled.

As argued above, not a single one, of at least 18 common records locations were explored. Moreover, the defendant only discovered the existence of more documents upon direction from the Plaintiff.

Lastly, the defendant attempts to display that, since it didn't charge Mr. Francis for producing withheld documents upon locating them, this would suggest "good faith". Defendant's Response, at 6. However, a party seeking discoverable materials through formal discovery procedures is not subject to prepayment of those materials prior to receiving them. Thus, this mitigating factor is inapplicable.

2. Defendant's Claim That Aggravators Are Lacking Is Unsupported

a. Undue Delay & Lack Of Strict Compliance With The PRA

The Plaintiff agrees that the defendant did not purposefully refuse to provide records. However, the records originally provided to Mr. Francis did not address the information he requested. A review of the records strongly supports the positive indications of overlooked materials, in a manner which can only be characterized as grossly negligent. Courts have evaluated the reasonableness of an agency's search based on what the agency knew at its conclusion rather than on what the agency speculated at its inception. Neighborhood Alliance of Spokane County v. County of Spokane, 153 Wn.App. 241, at 259, 224 P.3d 775 (2009). In this instant case, the department speculated

that there were no responsive records to Mr. Francis' request based on the rushed assumption of Yolanda Logan. The defendant's collective negligence caused undue delay, and showed little regard for compliance under the PRA. Thus, this aggravating factor is applicable.

b. Lack Of Proper Training

As previously argued, the adequacy of the defendant's search was poor, at best. Responding staff clearly did not demonstrate proper training by failing to search sources " 'that are likely to turn up the information requested' ". Id. at 259 (citing Campbell v. United States Department of Justice, 164 F.3d 20, 28-29 (1998)). Thus, this aggravating factor is applicable.

c. Economic Loss

Although "public" importance may not be implicated in the nature of Mr. Francis' request, Mr. Francis sought records because he did lose personal funds. The defendant, in its response, at 7, seems to suggest, however, that simply because the Plaintiff is incarcerated, that his claim is not as recognizable as that of an ordinary citizen, and as such, they should not be held to the same level of culpability, or responsibility, under the law in responding to Mr. Francis' request. The ideal that lawful compliance is shadowed by discrimination upon one's social status is troubling, and furthermore, damaging to lawful regard. The defendant has a lawful abiding duty to adhere to the strict compliance of enacted statutes in all situations.

d. Negligence/Bad Faith

Plaintiff does allege that bad faith and gross negligence was displayed by the defendant's responding employees. The adequacy of the agency's search is judged by a standard of reasonableness, construing the facts in the light most favorable to the requestor. Id. at 257 (quoting Citizens Comm'n on Human Rights v. Food & Drug Admin., 45 F.3d 1325, 1328 (9th Cir. 1995). Moreover, the agency must show that it " 'made a good faith effort to conduct a search... using methods which can be reasonably expected to produce the information requested.' " Id. at 257 (quoting Oblesby v. U.S. Dept. of Army, 920 F.2d 57, 68 (1990)).

In the instant case, DOC failed to make even a good faith effort to conduct a search in good faith, thus epitomizing the inference of bad faith, and displaying actual negligence of a gross manner. Thus, this aggravating factor is applicable.

e. Need To Deter Future Misconduct

The Department has paid out millions of dollars in penalties over the years due to PRA violations. One such case is Prison Legal News, Inc. v. The Department of Corrections, 154 Wn.2d 628, 115 P.3d 316 (2005). DOC paid out hundreds of thousands of dollars in just this one instant case. Despite continuous litigation, DOC somehow continues to violate the PRA. The defendant would rather have the courts impose "low end" penalties, than to take a serious look at their obviously flawed approach at handling records requests. Their displayed lack of proper regard for compliance under the PRA is partly attributed to a lack

of deterrent. A flea bite does little to deter an elephant. A penalty deterrent is clearly needed to force DOC into establishing a more compliant process of responding to records requests in the future.

C. Under The PRA, Requestors Need Only Make One Request

The defendant attempts to shift responsibility from itself when suggesting how this Court should assess factors in determining penalties. The defendant refuses to hold itself accountable, and instead, bases its penalty assessment by alleging inaction on behalf of the Plaintiff. However, Mr. Francis, is not the party who failed to act under the PRA.

Under the PRA, only one request, submitted by a requestor, is sufficient to hold an agency accountable for failure to strictly comply with the statute. Yousoufian v. Office of Ron Sims, 165 Wn.2d 439, at 461, 200 P.3d 232 (2009)(citing RCW 42.56.520). Simply put, responsibility is on the agency to respond, not on the requestor to keep requesting.

Mr. Francis was under no obligation to appeal or continue requesting the same records over and over. In fact, Courts have given little consideration to whether or not a requestor may have appealed or continued inquiries, as this is not the burden of the requestor. DOC only considers redactions or exemptions on appeal. Simple inquiries are not considered. Furthermore, although not required of him, Mr. Francis did make attempts to notify DOC of withheld records, contrary to the defendant's implications otherwise. Through the Notice of Appearance, filed by opposing counsel, Mr. Francis was instructed to direct "all future pleadings and correspondence" to opposing counsel. Mr. Francis corresponded with the defendant, through formal discovery, notifying them of withheld records.

Then again, on September 21, 2010, Plaintiff sent a typed letter to opposing counsel, informing the defendant that records were still withheld, to which there was no reply. After waiting 4 months, Plaintiff served a second set of discovery request forcing DOC to finally respond. Plaintiff's correspondence is not in question. The policy of encouraging access would be better served by imposing a penalty based upon the culpability of an agency, rather than on the amount of a requestor's unrequired communication.

D. Penalties Should Be Assessed For Each Separate Group Of Requested Records

Plaintiff does not request this Court to "triple penalize" the defendant, simply to impose a penalty for each individual and separate request that went unanswered, consistent with supporting case law.² Although the Court in Yousoufian V³ specifically addressed aggravating factors, they implicitly upheld their earlier position that trial courts be allowed to assess penalties according to each requested group of records. DOC concedes that Plaintiff made three separate and distinct requests in this matter, for which they collectively responded to on two separate occasions. Second Decl. of Francis, Exhibits I-3 & I-5 (Admissions No. 7, 8, 11, & 16). This fact is evinced by determining if Plaintiff would have received all of the provided documents by simply limiting his request to one of three groups. Simply put, the answer is NO. Because two of the groups were responded to after 437 days, and the third group after 617 days, Plaintiff asks that penalties apply to the amount of days that each group was not responded to.

Between Groups 1 & 2, responded to on August 31, 2010, a total of

² 152 Wn.2d 421, 98 P.3d 463 (2004) (Yousoufian III)

³ 168 Wn.2d 444, 229 P.3d 735

874 penalty days are assessed. Plaintiff requests a penalty of \$45 per day be applied to these groups, totaling \$39,330.

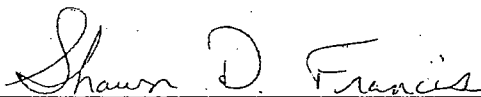
For the third and final group, responded to on February 28, 2011, a total of 615 days are assessed. Based on the presence of additional non-compliance, Plaintiff requests a penalty of \$80 per day be applied to this group, totaling \$49,200.

As such, a total penalty of \$88,530 is appropriate.

IV. CONCLUSION

Although the Court should not construe statutory language so as to result in absurd or strained consequences, neither should the Court question the wisdom of a statute even though its results seem unduly harsh. Duke v. Boyd, 133 Wn.2d 80, 87, 942 P.2d 351 (1997). A penalty, in the entire amount of what Plaintiff requests, would still only amount to removing a drop from a bucket of billions. However, such a penalty might just be the necessary medicine to force DOC into full PRA compliance. For the reasons stated herein, and also in Plaintiff's original Motion for Summary Judgment, Plaintiff asks this Court to impose the penalties sought herein, and to apply penalties to each requested group, pursuant to Yousoufian III, supra, and later upheld in Yousoufian V, supra. Lastly, to order that all Plaintiff's costs incurred in this matter be reimbursed.

Respectfully Submitted this 6th day of July, 2011.



Shawn D. Francis
Plaintiff, Pro se
DOC #749717
Airway Heights Corrections Center
PO Box 2049; Unit:L-A-28-L
Airway Heights, WA 99001
Tel: (509) 244-6700

ATTACHMENT - A

(Second Declaration of Shawn D. Francis)
Pierce County Superior Ct. No. 10-2-10630-3

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

SHAWN D. FRANCIS,)	
Plaintiff,)	
)	NO. 10-2-10630-3
v.)	
)	SECOND DECLARATION OF
DEPARTMENT OF CORRECTIONS,)	SHAWN D. FRANCIS
Defendant.)	
_____)	

I, Shawn D. Francis, hereby declare:

1. I am over the age of eighteen years, I am competent to be witness herein, I make this declaration under the pain and penalty of perjury under the laws of the State of Washington, and I make this declaration based upon my own knowledge.

2. I am the Plaintiff in the above-referenced case, and the attached documents, labeled as Exhibit I,

SECOND DECLARATION OF SHAWN D. FRANCIS - 1

through J, are true and correct copies.

3. On April 26, 2011, I propounded Plaintiff's First Request for Admissions on the Department of Corrections.

4. On May 26, 2011, the Department of Corrections ("DOC") responded to my first request for admissions. See Exhibit - I.

5. Within DOC's response to my requests for admissions, they admitted that the MICC Tier Rep Agenda Items and Response Minutes, dated June 6, 2008, were responsive to my records request in this matter. Furthermore, they admit that these records were not provided to me until after the commencement of this lawsuit. Lastly, they admit that these records were finally provided to me 437 days after I made my request. See Exhibits I-2 & I-3 (Requests Numbered 3, 4, & 7).

6. Within DOC's response to my requests for admissions, they admitted that the MICC Quarterly Tier Representative Meeting Minutes, dated November 16, 2007, were responsive to my records request in this matter. Furthermore, they admit that these records were not provided to me until after the commencement of this lawsuit. Lastly, they admit that these records were finally provided to me 437 days after I made my request. See Exhibits I-2 & I-3 (Requests Numbered 5, 6, & 8).

SECOND DECLARATION OF SHAWN D. FRANCIS - 2

7. Within DOC's response to my requests for admissions, they admitted that the Operational Memorandum (#MICC 440.000), with a revision date of 3/1/09, was responsive to my records request in this matter. Furthermore, they admit that these records were not provided to me until after the commencement of this lawsuit. Lastly, that these records were finally provided to me 615 days after I requested these records. See Exhibit I-3 (Requests Numbered 9, 10, & 11).

8. Within DOC's response to my requests for admissions, they admitted liability for failing to provide me with the records that I requested, prior to the filing of this lawsuit. See Exhibit I-4 (Request No. 12).

9. Within DOC's response to my requests for admissions, they admitted that my records request, dated June 22, 2009, asked for three (3) separately grouped requests. See Exhibit I-5 (Request No. 16).

10. In DOC's response to my first set of discovery requests, DOC provided me with a single page of correspondence between the McNeil Island Corrections Center, Public Disclosure Secretary - Tammie Stark, and another DOC employee - Yolanda D. Logan. This document supports the fact that atleast two other people, besides Public Disclosure Specialist - Brett Lorentson, and

Public Disclosure Coordinator - Brenda Murphy, participated in the gathering and response to my records request.

See Exhibit J-1.

11. In DOC's response to my first set of discovery requests, DOC provided me with a letter of reprimand, dated June 16, 2010, regarding Brett Lorentson's failure to follow procedures. The reprimand was for disclosing the name of a confidential informant, and then failing to inform his supervisor for almost a week, despite the possible seriousness of such an oversight. This letter shows that Mr. Lorentson has not been adequately trained. See Exhibit J-2.

12. Established procedures show that when responding to a records request, a "team" is constructed of multiple employees, which are tasked collectively to participate in responding to records requests. See Exhibit J-3 through J-5.

DATED this 6th day of July, 2011.

/s/ (original on file)

Shawn D. Francis

1
2
3
4
5
6
7 STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

8 SHAWN D. FRANCIS,

9 Plaintiff,

10 v.

11 DEPARTMENT OF CORRECTIONS,
12 a subdivision of the State of
Washington,

13 Defendant.
14

NO. 10-2-10630-3

PLAINTIFF'S FIRST REQUEST FOR
ADMISSIONS PROPOUNDED TO
DEFENDANT DEPARTMENT OF
CORRECTIONS

AND DEFENDANT'S
OBJECTIONS AND ANSWERS
THERE TO

15 GENERAL OBJECTIONS

16 The Defendant neither agrees nor stipulates to the Plaintiff's definitions or procedure.
17 These requests for admissions will be answered and supplemented in accordance with Civil
18 Rules 26 and 36. Without waiving such objections, answers are provided as set forth below.
19

20 REQUESTS FOR ADMISSIONS

21 REQUEST NO. 1: In the letter to Mr. Francis from Brett w. Lorentson, Public Disclosure
22 Specialist with Department of Corrections, dated July 2, 2009, Mr. Lorentson informed Mr.
23 Francis that only 15 pages of documents were responsive to his June 22, 2009 public records
24 request.

25 ANSWER: Admit.
26

PLAINTIFF'S FIRST REQUEST FOR
ADMISSIONS PROPOUNDED TO
DEFENDANT DEPARTMENT OF
CORRECTIONS AND DEFENDANT'S
OBJECTIONS AND ANSWERS
THERE TO - NO. 10-2-10630-3

1

ATTORNEY GENERAL OF WASHINGTON
Corrections Division
P.O. Box 40116
Olympia, WA 98504-0116
(360) 586-1445

APPENDIX 000166

I - 1

1 **REQUEST NO. 2:** In an email to Mr. Francis from Brett W. Lorentson, Public Disclosure
2 Specialist with Department of Corrections, dated July 10, 2009, at 2:55 p.m., Mr. Lorentson
3 sent 10 pages of DOC Policy 440.000, titled PERSONAL PROPERTY FOR OFFENDERS; 1
4 page that was an ADMINISTRATIVE BULLETIN from Eldon Vail; 1 page titled
5 IMPLEMENTATION PLAN; and 3 pages titled MAXIMUM ALLOWABLE PERSONAL
6 PROPERTY MATRIX MEN'S FACILITIES; for a total of 15 responsive documents.

7 **ANSWER:** Admit.

8
9 **REQUEST NO. 3:** The MICC Tier Rep Agenda Items and Response Minutes, dated June 6,
10 2008, were not provided to Mr. Francis prior to the June 28, 2010 filing date of this lawsuit.

11 **ANSWER:** Admit that the document in question was not provided to Mr.
12 Francis in response to his June 22, 2009 public records request prior to June 28, 2010.

13
14 **REQUEST NO. 4:** The MICC Tier Rep Agenda Items and Response Minutes, dated June 6,
15 2008 are responsive to Mr. Francis's June 22, 2009 public records request.

16 **ANSWER:** Admit.

17
18 **REQUEST NO. 5:** The MICC Quarterly Tier Representative Meeting Minutes, dated
19 November 16, 2007, were not provided to Mr. Francis prior to the June 28, 2010 filing date of
20 this lawsuit.

21 **ANSWER:** Admit that the document in question was not provided to Mr.
22 Francis in response to his June 22, 2009 public records request prior to June 28, 2010.

23
24 **REQUEST NO. 6:** The MICC Quarterly Tier Representative Meeting Minutes, dated
25 November 16, 2007 are responsive to Mr. Francis's June 22, 2009 public records request.

26 **ANSWER:** Admit.

1
2 REQUEST NO. 7: The MICC Tier Rep Agenda Items and Response Minutes, dated June 6,
3 2008, were not provided to Mr. Francis until August 31, 2010.

4 ANSWER: Admit.

5
6 REQUEST NO. 8: The MICC Quarterly Tier Representative Meeting Minutes, dated
7 November 16, 2007, were not provided to Mr. Francis until August 31, 2010.

8 ANSWER: Admit.

9
10 REQUEST NO. 9: The OPERATIONAL MEMORANDUM (DEPARTMENT OF
11 CORRECTION POLICY) #MICC 440.000 – PERSONAL PROPERTY FOR OFFENDERS,
12 with a revision date of 3/1/09, was not provided to Mr. Francis prior to the June 28, 2010 filing
13 date of this lawsuit.

14 ANSWER: Admit that the document in question was not provided to Mr.
15 Francis in response to his June 22, 2009 public records request prior to June 28, 2010.

16
17 REQUEST NO. 10: The OPERATIONAL MEMORANDUM (DEPARTMENT OF
18 CORRECTION POLICY) #MICC 440.000 – PERSONAL PROPERTY FOR OFFENDERS,
19 with a revision date of 3/1/09, is responsive to Mr. Francis's June 22, 2009 public records
20 request.

21 ANSWER: Admit.

22
23 REQUEST NO. 11: The OPERATIONAL MEMORANDUM (DEPARTMENT OF
24 CORRECTION POLICY) #MICC 440.000 – PERSONAL PROPERTY FOR OFFENDERS,
25 with a revision date of 3/1/09, was not provided to Mr. Francis until February 28, 2011.

26 ANSWER: Admit.

1
2 **REQUEST NO. 12:** DEPARTMENT OF CORRECTIONS is liable to Mr. Francis because
3 DEPARTMENT OF CORRECTIONS violated the Public Records Act by failing to provide
4 him, prior to the June 28, 2010 filing date of this lawsuit, with the MICC Tier Rep Agenda
5 Items and Response Minutes, dated June 6, 2007; and the MICC Quarterly Tier Representative
6 Meeting Minutes, dated November 16, 2007; and the OPERATIONAL MEMORANDUM
7 (DEPARTMENT OF CORRECTIONS POLICY) #MICC 440.000 – PERSONAL
8 PROPERTY FOR OFFENDERS, with the revision date of 3/1/09.

9 **ANSWER:** Admit that the Department of Corrections failed to provide all
10 documents responsive to Mr. Francis's June 22, 2009 public records request prior to June 28,
11 2010.

12
13 **REQUEST NO. 13:** Mr. Francis's June 22, 2009 records request requested any and all
14 documents related to any reason and/or justification for why inmates at the McNeil Island
15 Corrections Center were not allowed to retain fans in their cells.

16 **ANSWER:** Admit.

17
18 **REQUEST NO. 14:** Mr. Francis's June 22, 2009 records request requested any and all
19 documents related to any reason and/or justification for why inmates at the McNeil Island
20 Corrections Center were not allowed to retain hot pots in their cells.

21 **ANSWER:** Admit.

22
23 **REQUEST NO. 15:** Mr. Francis's June 22, 2009 records request also requested any policy
24 that may be in place to substantiate such restrictions on fans and hot pots.

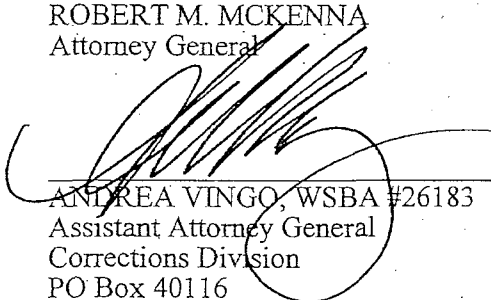
25 **ANSWER:** Admit.

1 REQUEST NO. 16: Mr. Francis's June 22, 2009 records request requested three separate
2 types of records: (1) reasons justifying not allowing fans in inmate cells; (2) reasons justifying
3 not allowing hot pots in inmate cells; and (3) any policy (current at the time of Mr. Francis's
4 June 22, 2009 records request) that substantiated such restrictions on inmate fans and hot pots.

5 ANSWER: Admit.

6
7 THE UNDERSIGNED attorney has read the foregoing objections and answers to
8 *PLAINTIFF'S FIRST REQUESTS FOR ADMISSION PROPOUNDED TO DEFENDANT*
9 *DEPARTMENT OF CORRECTIONS* and they are in compliance with CR 26(g), dated this
10 26th day of May, 2011.

11 ROBERT M. MCKENNA
12 Attorney General

13
14 
15 ANDREA VINGO, WSBA #26183
16 Assistant Attorney General
17 Corrections Division
18 PO Box 40116
19 Olympia, WA 98504-0116
20 (360) 586-1445
21
22
23
24
25
26

Stark, Tammie J. (DOC)

From: Logan, Yolanda D. (DOC)
Sent: Monday, June 29, 2009 10:17 AM
To: Stark, Tammie J. (DOC)
Cc: Bratten, Kenneth A. (DOC)
Subject: RE: Public Disclosure Request # 7430 Shawn Francis DOC # 749717

I do not have any "documents" specifically stating " inmates at MICC not being allowed to retain fans or hot pots in their cells." What I do have is access to Policy 440.000 that governs what items offenders are able to have in their cells. Any items outside of the Property Matrix in Policy 440.000, Personal Property for Offenders are considered contraband. The guidelines set up in Policy 440.000 are for the purpose of meeting safety, security, discipline, sanitation, accountability, and storage needs.

In the Property Matrix under the title "Major Non-Consumables" 1 electric fan (12" maximum) is approved at Minimum/Medium/Close custody levels. The same is for "Hot Pots." 1 Plastic is allowed but only "as authorized by facility." This is the maximum allowed for personal property only.

<http://insidedoc/usercontents/policies/Doc/Word/440000a1.pdf>

From: Stark, Tammie J. (DOC)
Sent: Monday, June 29, 2009 9:54 AM
To: Bratten, Kenneth A. (DOC)
Cc: Logan, Yolanda D. (DOC)
Subject: Public Disclosure Request # 7430 Shawn Francis DOC # 749717

Hello,

I have a Public Disclosure Request # 7430 Shawn Francis DOC # 749717. The request is for any and all documents related to any reason and or justification for the reason why inmates at MICC are not allowed to retain fans or hot pots in their cells, as well as any policy that may be in place to substantiate such restrictions on these items. I need these documents to me no later than 07-06-09.

Thank-you!

Tammie Stark
Public Disclosure Secretary
McNeil Island Corrections Center
(253) 589-4464 (Phone)
(253) 512-6603 (Fax)



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
P.O. Box 41100 • Olympia, Washington 98504-1100

June 16, 2010

Mr. Brett Lorentson
Public Disclosure Specialist

PERSONAL DELIVERY
CONFIDENTIAL

Dear Brett:

This letter of reprimand is for your failure to follow set procedures in obtaining a second review of records that contained confidential information prior to their release and for your failure to notify me of this mistake immediately upon discovery.

On Monday, June 7, 2010, you came to my office to discuss various questions you had of me, at the end of our discussion you stated you had one additional issue to discuss that you had been concerned about. You then proceeded to notify me that you had accidentally released the name of a confidential informant and had already mailed the records as designated by the requestor. You told me that you discovered your mistake while closing out the file on Wednesday, June 2, 2010. Later that same day, I stated to you that it appeared there was no review done of the records by anyone beside yourself before the records were released and you stated you did not know why this did not occur.

On March 23, 2010 you were given specific expectations, which specifically stated "You must get a 2nd set of eyes if the following applies: 1. Confidential Informant or Information/STG info...".

As a Department of Corrections employee, you have a duty and responsibility to follow agency policies and procedures. Based on the fact that you did not follow both my verbal and written directives to have a second review done where confidential information was involved and you failed to report this mistake to me immediately when the release of this information has the potential for major ramifications, up to and including the potential loss of one's life or personal safety.

The intent of this letter of reprimand is to impress upon you the seriousness of your actions or lack thereof when this incident occurred. In the future, I expect you to follow my directives regarding the second round review of records involving confidential information and should other serious incidents occur that you immediately notify me of the situation. If you have any questions regarding policies and procedures or my expectations on how to respond in situations when they occur, immediately contact me for clarification.

Any future acts of this type of misconduct will result in further corrective and/or disciplinary action being taken against you.

Sincerely,

Denise Vaughan, Public Records Officer & Compliance Manager
Government, Community Relations & Regulatory Compliance Division

cc: Supervisory File
Personnel File

"Working Together for SAFE Communities"



APPENDIX 000172

Francis v. DOC
DEFS-000085

J-2

TITLE: Newsbrief 03-04, Amendment 2

Amended: August 18, 2010
Amended: September 15, 2006
Effective: December 15, 2003
Subject: PDR Referral Process

Public Disclosure requests must be responded to within statutory guidelines in the most efficient manner for both staff and the requestor.

Definitions:

Public Disclosure Coordinator (PDC) – The staff person appointed in various geographic locations responsible to ensure that all public disclosure requests are responded to appropriately. Complete information regarding PDC selection and responsibilities is provided in policy DOC 280.510.

PDC Backup - A staff that performs PDC job duties as necessary when the PDC is unavailable. Each PDC must designate a PDC Backup and ensure appropriate training.

PDC Team Member – Multiple staff persons designated by each PDC to actively participate in the public disclosure process within each geographic location. Each PDC may have as many Team Members as needed to support the local disclosure process. For example, a Team may consist of the PDC, PDC Backup, Records Manager, and Human Resources Manager.

Public Disclosure Request (PDR) – Request for an identifiable public record. See RCW 42.56 for complete information.

General Procedures:

- 1) A minimal number of PDC staff shall communicate with each requestor. A requestor will not receive individual letters from multiple units within DOC.
- 2) One PDC shall be selected to coordinate each request. That selection occurs by determining where the majority of responsive documents exist and which PDC is responsible for those documents. If a dispute exists regarding who has the most responsive documentation first decide among the involved PDCs then refer any disputes to the Public Records Officer for final decision.
- 3) All communication regarding a public disclosure request will occur between PDCs only. A PDC may choose to refer to another staff, but start all discussions by contacting the appropriate PDC.

4) Each PDC is responsible for delegating task authority to Team Members and the PDC Backup. Therefore, each Team will have a unique public disclosure process but each PDC is ultimately responsible for the effectiveness of that internal process.

5) The coordinating PDC is responsible for all communications with the requestor, final records retention of all coordinated requests, and for reporting the request within the PDCs statistical tracking log.

Process:

- 1) Once a public disclosure request is received determine which PDC shall be responsible for coordination of response.
- 2) The coordinating PDC is responsible to send the requestor the 5-day initial response.
- 3) The coordinating PDC is then responsible for requesting and gathering responsive documents. If responsive documents exist outside the coordinating PDC's scope of responsibility, the coordinating PDC should contact the appropriate PDC responsible for the facility/region/office where documents may be located.
- 4) When a PDC is sending documents to a coordinating PDC at another location:
 - Provide the documents by the most efficient way possible, i.e. courier mail, US postal mail, fed ex.
 - Provide one set of document copies in a "ready to release" format unless the coordinating PDC indicates otherwise. Unless otherwise indicated, send the documents already redacted and provide all appropriate denial forms already signed by the PDC that did the actual redactions. Workload dictates that no one PDC is inundated with documents that need additional work before release.
 - Provide one unredacted copy of all documents to the coordinating PDC.
- 5) The coordinating PDC combines the page count from all locations and sends the cost letter (bill) to the requestor for all documents.
- 6) Once the requestor provides payment the coordinating PDC mails the responsive documents to the requestor.

Exceptions:

- 1) If the request is only for a central file, all central file requests shall be forwarded to the PDC where the central file is located. That PDC then works with the Records Staff to ensure that response occurs per the local process.
- 2) If the request is only for a medical file, all medical file requests shall be forwarded to the RHIT (Registered Health Information Technician) within each facility. Medical disclosure follows different statutes from public disclosure. If a medical file request is received in the field, that request shall be referred to the RHIT at HQ for appropriate response. See Newsbrief 05-06 for further instructions.

TITLE: Newsbrief 04-02, Amendment 2

Amended: August 18, 2010
Amended: December 23, 2005
Effective: August 2, 2005
SUBJECT: Acronyms in Newsbriefs

For the purpose of Newsbrief communications, the following acronyms may be used:

PD = Public Disclosure.

Used in reference to the entire public disclosure process.

PRA = Public Records Act

RCW 42.56

Previously, PDA = Public Disclosure Act.
Legislative change in 2006, was RCW 42.17.

PDC = Public Disclosure Coordinator

Staff member responsible for processing public disclosure requests within assigned geographic locations. DOC Policy 280.510 states the responsibilities of these staff members. There is one position designated per facility, region, and office.

PDR = Public Disclosure Request

The request for an identifiable public document.

PDS = Public Disclosure Specialist

Public Disclosure Specialist positions are located within the Public Disclosure Unit at Headquarters. The Public Disclosure Specialist position job duties include providing response and direction to Public Disclosure Coordinators.

PDU = Public Disclosure Unit

Public Disclosure Unit at Headquarters.

DECLARATION OF MAILING

I, Shawn D. Francis, declare that on 7/6/2011, I deposited the foregoing documents, or a copy thereof, in the internal legal mail system of the Airway Heights Corrections Center, U.S. Pre-Paid 1st Class Mail, to all parties listed below.

I further declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Documents

- 1- Reply to Defendant's Response to Plaintiff's Motion for Summary Judgment
- 1- Second Declaration of Shawn D. Francis with attached exhibits (Attached to Reply Brief)

Parties Served By First Class Mail

1) ANDREA VINGO
Assistant Attorney General
Corrections Division
PO Box 40116
Olympia, WA 98504-0116

3) Honorable JOHN R. HICKMAN
Department 22
Pierce County Superior Court
930 Tacoma Ave. S.
Tacoma, WA 98402

2) Clerk of the Court
Pierce County Superior Court
930 Tacoma Ave S.
Rm #110
Tacoma, WA 98402-2117

RECEIVED

JUL 11 2011

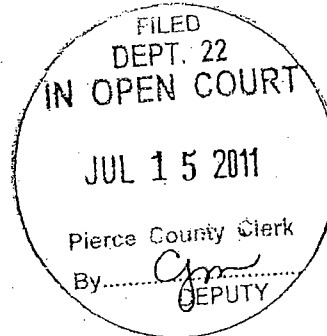
ATTORNEY GENERAL'S OFFICE
CORRECTIONS DIVISION

DATED this 6th day of July, 2011.

Shawn D. Francis

Shawn D. Francis
DOC #749717
Airway Heights Corrections Center
PO Box 2049; Unit: L-A-28-L
Airway Heights, WA 99001

DECLARATION OF MAILING



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

SHAWN FRANCIS

Petitioner,

Cause No: 10-2-10030-3

vs.

DEPARTMENT OF CORRECTIONS

ORDER GRANTING SUMMARY JUDGMENT

Respondent.

Based on the briefs and arguments of the parties the Court grants the Plaintiff's Motion for Summary Judgment as to liability only. The issue of Habituality will be decided by motion and declarations, to be held on September 16, 2011 at 1³⁰ pm.

DATED this 15th day of July, 20 11.

JUDGE JOHN R. HICKMAN

Attorney for Petitioner
WSBA#

Attorney for Respondent
WSBA# 21013

Judge John R. Hickman
Dept. 22
Hearing: Sept. 16, 2011
1:30 p.m. Telephonic

STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

SHAWN D. FRANCIS,

Plaintiff,

v.

DEPARTMENT OF CORRECTIONS,
a subdivision of the State of
Washington,

Defendant.

NO. 10-2-10630-3

DEFENDANT'S RESPONSE RE:
PENALTIES

Defendant, Department of Corrections (the Department or DOC), by and through its attorneys of record, ROBERT M. MCKENNA, Attorney General, and ANDREA VINGO, Assistant Attorney General, submit the following response regarding penalties.

I. STATEMENT OF FACTS

This is a Public Records Act (PRA) action filed by the Plaintiff, inmate Shawn Francis, against the Department of Corrections (the Department), where Mr. Francis is currently serving a criminal sentence. Exhibit 1, Declaration of Katrina Toal, Attachment A, Legal Face Sheet, at 4-7. At a hearing on July 15, 2011, this Court found that the Department violated the PRA.

II. STATEMENT OF ISSUES

1. Whether Mr. Francis is entitled to penalties under the PRA.

III. EVIDENCE RELIED UPON

Defendant relies upon this motion with the attached Declaration of Katrina Toal, including attachments.

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IV. ARGUMENT

A. Mr. Francis Is Not Entitled To Penalties Because He Is An Inmate Serving A Criminal Sentence And Has Not Shown That The Department Acted In Bad Faith

Mr. Francis is not entitled to penalties in this case because he is an inmate serving a criminal sentence, because this case was pending at the time that the applicable law came into effect, and because he has failed to show that the Department acted in bad faith.

In 2011, the Legislature passed legislation regarding inmate plaintiffs in PRA actions. The law states that:

[a] court shall not award penalties under RCW 42.56.550(4) to a person who was serving a criminal sentence in a state, local, or privately operated correctional facility on the date the request for public records was made, unless the court finds that the agency acted in bad faith in denying the person the opportunity to inspect or copy a public record.

This act applies to all actions brought under RCW 42.56.550 in which final judgment has not been entered as of the effective date of this section.

RCW 42.56.565 (as amended by Laws of 2011, ch. 300, §§ 1, 2). This law went into effect on July 25, 2011.

It is the Department's position that a Plaintiff has the burden of persuasion to show the Department acted with bad faith. Unlike "bad faith" as an aggravator which increases a penalty, the finding of "bad faith" under the new statute would *establish* the award of any penalty. This is consistent with the requirement of a plaintiff to show a lack of good faith by an insurer when the insurer has a duty to act in good faith, as similar requirement of agencies in responding to PRA record requests. See *6A Washington Pattern Jury Instruction: Civil* 320.01 (5th ed. 2011).

This law is too recent for any appellate decisions interpreting it, yet bad faith has been an aggravating factor which courts have analyzed in determining the amount of penalty for a court to award. The definition of "bad faith" includes that it "is not simply bad judgment or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity..." Black's Law Dictionary 127 (5th ed. 1979).

1 Current case law on bad faith may provide guidance toward a definition. "Bad faith"
2 exists when the State knows it has records that should be disclosed, but intentionally, and
3 without justification, fails to disclose them. *Yousoufian v. Office of Ron Sims*, 114 Wn. App.
4 836, 853, 60 P.3d 667 (2003) (*Yousoufian III*), *aff'd in part and reversed on other grounds in*
5 *part*, 152 Wn.2d 421, 98 P.3d 463 (2004) (*Yousoufian II*). Even reliance on an invalid basis
6 for nondisclosure may not result in a finding of bad faith, so long as the basis is not
7 "farfetched" or asserted with knowledge of its invalidity. *King County v. Sheehan*, 114 Wn.
8 App. 325, 357, 57 P.3d 307 (2002); *Yousoufian*, 114 Wn. App. at 852.

9 The Federal Freedom of Information Act (FOIA) may also provide guidance in
10 defining "bad faith". See *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 580 P.2d 246 (1978)
11 (Washington's PRA closely resembles the FIOA, and thus, when appropriate, Washington
12 Courts look to judicial interpretations of the FOIA). For example, a federal court has
13 found that the United States Parole Commission conducted good faith search for records
14 requested by an inmate under the FOIA, even though the search failed to locate a tape of a
15 specific parole hearing in which individual named in FOIA request testified as an adverse
16 witness, and that the agency conducted a reasonable search targeted specifically at the inmate's
17 parole hearing tapes, and did in fact locate and release a tape of a hearing to the inmate, even
18 though such tape did not contain desired testimony. *Antonelli v. U.S. Parole Com'n*, 619 F.
19 Supp. 2d 1 (D.D.C. 2009).

20 Here, there can be no argument that Mr. Francis is currently serving a criminal sentence
21 at a state institution, and that a final judgment had not been entered at the time the new PRA
22 law went into effect. In addition, Mr. Francis has provided no evidence to support that the
23 Department acted in bad faith. And even if it were the Department's burden to show a lack of
24 bad faith, the Department has met that burden by setting forth the nature and extent of the
25 search made in this case. See Declaration of Lorentson in Support of Motion for Summary
26 Judgment. As such, Mr. Francis is not entitled to penalties.

1 B. In The Alternative, Imposition Of A Per Day Sanction At The Bottom Of The
2 Range Is Appropriate

3 If the court finds a violation of the PRA, this Court should impose a per day
4 sanction at the bottom of the \$0 to \$100 range. RCW 42.56.550(4); *Yousoufian v. Office of*
5 *Ron Sims*, 168 Wn.2d 444, 229 P.3d 735, (2010) (*Yousoufian V*). The Washington
6 Supreme court reestablished a 16-factor nonexclusive guide of mitigating and aggravating
7 factors to be used by trial courts in assessing PRA penalties. *Id.* The Court established the
8 following mitigating factors:

- 9 1. A lack of clarity in the PRA request; → no
- 10 2. The agency's prompt response or legitimate follow-up inquiry for
11 clarification; → yes
- 12 3. The agency's good faith, honest, timely, and strict compliance with all
13 PRA procedural requirements and exceptions; → see eg
- 14 4. Proper training and supervision of the agency's personnel;
- 15 5. The reasonableness of any explanation for noncompliance by the
16 agency; → yes
- 17 6. The helpfulness of the agency to the requestor; and - yes
- 18 7. The existence of agency systems to track and retrieve public records.

19 *Yousoufian V*, 168 Wn.2d at 467-68. The Court established the following aggravating
20 factors:

- 21 1. A delayed response of the agency, especially where time is of the
22 essence;
- 23 2. Lack of strict compliance by the agency with all the PRA procedural
24 requirements and exceptions;
- 25 3. Lack of proper training and supervision of the agency's personnel;
- 26 4. Unreasonableness of any explanation for noncompliance by the agency;
5. Negligent, reckless, wanton, bad faith, or intentional non-compliance
by the agency;

6. Agency dishonesty;
7. The public importance of the issue to which the request is related, where the importance was foreseeable to the agency;
8. Any actual personal economic loss to the requestor resulting from the agency's misconduct, where the loss was foreseeable to the agency; and
9. A penalty amount necessary to deter future misconduct by the agency, considering the size of the agency and the facts of the case.

Id. In establishing this guide, the Court specifically rejected the argument that a penalty calculation should begin at the midpoint of the range. *Yousoufian V*, at 467. Here, the facts underlying Mr. Francis' claims heavily weigh in favor of the *Yousoufian V* mitigating factors, and against the aggravating factors.

1. The Nature And Circumstances Of Plaintiff's Claims Support The *Yousoufian V* Mitigating Factors

a. Clarity Of The Request

The Department agrees that Mr. Francis' request was clear.

b. Training, Supervision, And Tracking Of PRA Requests

The Department has adopted policies and procedures for responding to public records requests. In doing so, the Department has ensured that each of the individuals who respond to public records requests receive training, including Mr. Lorentson. Mr. Lorentson has had 14 hours of training on Public Disclosure Updates, two hours of training provided by the Attorney General's Office on public records, and one hour of training on metadata, track changes, electronic redaction, and ethical obligations. He has also received over three years of on-the-job training. Moreover, per his training, Mr. Lorentson assigned Mr. Francis' request a tracking number. This kind of training, supervision and tracking supports a mitigation of penalties.

1 c. **Good Faith Compliance And Helpfulness To The Requestor**

2 Throughout the request process, the Department has faithfully corresponded to Mr.
3 Francis and has made every effort to look for additional documents. This is evidenced by the
4 amount of correspondence provided as attachments to the declaration submitted on behalf of
5 the Department. Furthermore, when additional responsive documents were discovered, the
6 Department provided them at no cost to Mr. Francis. This is in no way a situation where an
7 agency ignored a requestor, or chose not to respond to his correspondence after a certain
8 period, as was the case in *Yousoufian V.*

9 2. **The Nature And Circumstances Of Plaintiff's Claims Do Not Support The**
10 ***Yousoufian V* Aggravating Factors**

11 a. **Delayed Responses, Lack Of Strict Compliance, Unreasonable**
12 **Explanation For Non-Compliance**

13 First and foremost, the Department did not refuse to provide records. In fact, the
14 Department provided at least some of the records in a timely manner, two sets before this
15 action was filed and two sets after.

16 b. **Lack Of Proper Training And Supervision**

17 As argued previously, the Department has developed extensive policies, training and
18 supervision regarding public records disclosure, including a unit dedicated solely to the
19 production and review of such records. Considering this, lack of proper training and
20 supervision cannot be considered as an aggravating factor.

21 c. **Negligence, Recklessness, Bad Faith, Dishonest, Or Intentional**
22 **Noncompliance**

23 There are no allegations that the Department acted intentionally, dishonestly,
24 recklessly, or in bad faith. Even negligence is questionable, considering the tracking of and
25 number of responses to Mr. Francis' request.
26

1 d. **Public Importance Of The Request And Economic Loss To The**
2 **Requestor**

3 Mr. Francis' request for inmate-related items is of little, if any, importance to the
4 public. Any failure to receive these records did no economic damage -- in fact, failure to
5 receive these records was actually a boon to Mr. Francis as it allowed for him to file a
6 profitable action under the Act. Thus, this aggravating factor is inapplicable.

7 e. **Need To Deter Future Misconduct**

8 The Department of Corrections received approximately 6,730 public records requests in
9 2007, approximately 11,130 in 2008, and approximately 12,900 in 2009. The Department
10 employs approximately 8,000 statewide, however; only 13 staff are assigned to the Public
11 Disclosure Unit. This means that each full time employee in the Public Records Unit
12 responded to about 1,000 public records requests. And since 2008 Mr. Francis has made
13 enough public records requests, 15, to occupy one full time public disclosure employee for a
14 week. On the whole, the Department is doing everything in its power to comply with the Act.
15 The burden of a large per day penalty would not deter future non-compliance -- it would only
16 reduce the shrinking budget for the unit tasked with responding to future requests.

17 3. **Penalties Should Be Assessed Separately: One Per Day Penalty For Before**
18 **This Action Was Filed And Another For After**

19 *Yousoufian III* gave this Court discretion to assess, or not assess, separate penalties
20 based on the nature of the PRA violation. *Yousoufian v. Office of Ron Sims*, 114 Wn. App.
21 836, 60 P.3d 667 (2003) (*Yousoufian III*), *reversed on other grounds*, 152 Wn.2d 421, 98
22 P.3d 463 (2004). In *Yousoufian III*, the Court of Appeals considered the appropriateness of
23 separating out a multi-part PRA request so as to assess penalties fairly. *Id.* The Court
24 found that the trial court's categories were not arbitrary, but were based on reasonable criteria
25 and provided the court with a middle ground between the extreme penalty requested by
26 *Yousoufian* and the minimal penalty sought by the County. In fact, given our above

1 conclusions, *the trial court would have been within its discretion to simply award an amount*
2 *within the statutory range for each day that each of Yousoufian requests went unanswered.*
3 *Id.*, at 849 (emphasis added). In this way, this Court is not required to “triple penalize” the
4 Department for each day that certain responsive documents were not provided as Mr. Francis
5 suggests. Instead this Court should look at and impose penalties based on the time period
6 before this action was filed and the time period after.

7 Here, Mr. Francis waited for an entire year to file this action, which this Court is
8 urged to consider when assessing penalties. Mr. Francis was told that his PRA request was
9 closed in July 2009. At that time, he did not communicate further with the Department to
10 ask if further responsive documents existed. While not required by the Act, Mr. Francis
11 did not take advantage of the Department’s internal appeal process. Instead, Mr. Francis
12 waited until a few days before the one year statute of limitations ran to file this action. If
13 Mr. Francis truly was interested in obtaining the documents requested, he would not have
14 waited almost a year to put the Department on notice. The only conclusion that can be
15 reached from Mr. Francis’ inaction is that he was looking for a monetary windfall. As
16 such, the time between Mr. Francis’ initial request and his filing of this action---353 days--
17 -should be penalized at a rate of \$5 per day.

18 As for the remainder of the penalty period---273 days---the *Yousoufian V* factors
19 suggest that a penalty of \$10 per day is appropriate. In *Yousoufian V*, the only case that
20 gives any guidance to appropriate per day penalties, the Washington State Supreme Court
21 considered an egregious situation where King County failed to provide documents for four
22 years, failed to communicate with the requestor, and intentionally withheld and exempted
23 numerous documents. *Yousoufian V*, 168 Wn.2d 444. There, despite such actions, the
24 Court upheld a \$45 per day penalty. *Id.* Clearly, the facts discussed here do not rise to this
25 level, and as such, a \$10 per day penalty is appropriate.

26 As such, a total penalty of \$4,495 is appropriate under the facts of this case.

V. CONCLUSION

For the reasons stated above, the Department asks that the Court impose no penalties, or in the alternative, that the Court impose penalties at the bottom of the range pursuant to *Yousoufian V.*

RESPECTFULLY SUBMITTED this 13th day of September, 2011.

ROBERT M. MCKENNA
Attorney General

ANDREA VINGO, WSBA #26183
Assistant Attorney General
Corrections Division
P.O. Box 40116
Olympia, WA 98504-0116
(360) 586-1445

CERTIFICATE OF SERVICE

I certify that on the date indicated below, I served a true and correct copy of the foregoing DEFENDANT'S RESPONSE RE: PENALTIES on all parties or their counsel of record as follows:

- ☒ US Mail Postage Prepaid
☐ United Parcel Service, Next Day Air
☐ ABC/Legal Messenger
☐ State Campus Delivery
☐ Hand delivered by _____

TO:

SHAWN D FRANCIS #749717
AIRWAY HEIGHTS CORRECTIONS CENTER
PO BOX 2049
AIRWAY HEIGHTS WA 99001-2049

EXECUTED this 13th day of September, 2011, at Olympia, Washington.

Katrina Toal
KATRINA TOAL

EXHIBIT 1

STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

SHAWN D. FRANCIS,

Plaintiff,

v.

DEPARTMENT OF CORRECTIONS, a
subdivision of the State of Washington,

Defendant.

NO. 10-2-10630-3

DECLARATION OF
KATRINA TOAL

I, KATRINA TOAL, make the following declaration:

1. I am a legal secretary with the Corrections Division of the Attorney General's Office in Olympia, Washington. I have been employed in this position since 1990.

2. I am familiar with the Offender Management Network Information (OMNI) used by the Department of Corrections (DOC). I am authorized by the DOC to retrieve information from the OMNI. Among other things, information regarding an offender's location, custody, birth date, sentence, and infractions are entered and tracked on OMNI. Attached to this declaration as

Attachment A is a true and correct copy of the OMNI Legal Face Sheet for Shawn Francis, DOC #749717, which was obtained from the OMNI.

I declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

SIGNED this 13th day of September, 2011, at Olympia, Washington.


Katrina Toal
KATRINA TOAL

EXHIBIT 1

ATTACHMENT A

APPENDIX 000190

Inmate: FRANCIS, Shawn Dominique (749717)

Gender: Male	DOB:  Age: 33	Category: Regular Inmate	Body Status: Active Inmate
RLC: LOW	Wrap-Around: No	Comm. Concern: Yes	Custody Level: Minimum 3 - Long Term Minimum
ERD: 12/24/2017	Victim Sensitive: No	CC/CCO: Jordan, Dennis P	

Offender Information (Combined)

Prison Max Expiration Date: 03/08/2021 Last Static Risk Assessment Date: 01/20/2009 DOSA:

Planned Release Date: Last Offender Need Assessment Date: 01/20/2009 ISRB? No

Earned Release Date: 12/24/2017 RLC Override Reason: CCB? No

ESR Sex Offender Level: SOSSA? No

ESR Sex Offender Level Date: Offender Release Plan: Notification WEP? No

County Sex Offender Level: Victim Witness Eligible? Yes


Registration Required? County Of First Felony Conviction: Pierce


ORCS? No P U L H E S D X T
2 1 2 1 1 1 1 1 1

DD? No

SMIO? N

Personal Characteristics

Aliases, Dates of Birth and Places of Birth			
Aliases			
*Last Name:	First Name:	Middle Name or Initial:	Suffix:
SWAIN	Shawn		
FRANCIS	Shawn	D	
FRANCIS	Sean	D	
Dates of Birth		Places of Birth	
*Dates of Birth:	Use for Age Calculation?	City:	State / Province: Country:
	Yes	Unknown	New Mexico United States

Identifications			
General			
FBI Number:	FBI Fingerprint Code:	WA State ID Number:	ICE Registration Number:
666267AB7	251716P018PIDO19P117	WA17745851	
Social Security		Driver's License	
Social Security Number:	Validated with SSA?	Driver's License Number:	State / Province: Country:
	Y		
Jurisdiction			

APPENDIX 000191

ATTACHMENT A

*Type of Jurisdiction: County/State/Country: *Other Jurisdiction Number:

Physical Description / Marital Status

*Gender:	Hair Color:	Eye Color:	Complexion:	Marital Status:
Male	Brown	Brown	Dark	Single
Height:	Weight:	*Person Type:	*Twin or Multiple Births?	
5 Ft. 10 In.	183 Lbs	DOC	N	

Race, Hispanic Origin and Citizenship

*Race:	Ethnic Affiliation:	Use for Documentation?	Hispanic Origin?	Citizenship:
White	European/N.Am./Austr	Y	N	United States

Languages

Language:	Comprehend?	Read?	Prefers:
English	Yes	No	Yes

Scars, Marks and Tattoos

SMT Type:	SMT Subtype:	Body Part:	Description:
Tattoo	Arm	Shoulder, Right	'S'
Tattoo	Arm	Hand, Left	BLUE DOT, (WEB)
Tattoo	Arm	Arm, Upper Left	BASEBALL, 'S-F'

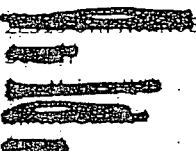
Remarks

OBTS Conversion: "S"RSHLDR;BASEBALL,"S-F",LUA


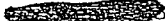
Diet

Diet Name:	Approved By:	Effective Date:	End Date:
Kosher	<u>Kirby, Bernard F</u>	09/11/2009	07/03/2010
Halal	<u>Matero, Amy S</u>	07/22/2011	

Primary, Mailing and Other Addresses

Role:	Name and Address:	Current Residence?	Valid for Mailing?	Disclosable?	Effective Date:	End Date:
Offender Primary Address		Y		Y	06/10/1996	

Emergency Contacts

Relationship:	Emergency Contact Name and Address:	Phone Number:	Effective Date:	End Date:
Mother			07/31/2008	

Email Addresses and Phone Numbers**Email Addresses**

Role: Name: Email Address: Effective Date: End Date:

Phone Numbers

Role: Name: Phone Number: Effective Date: End Date:
 Offender Primary Telephone [REDACTED] 03/17/2003

Employers

Employer Name: Occupation: Contact Name: Address: Employer Email: Phone Number: Monthly Income: Effective Date: End Date:

Other Monthly Income

Other Monthly Income Description (Current): Other Monthly Income Amount (Current):

Monthly Income From All Sources (Current): \$0.00

Military Service**Claim Number**

Branch: Start Date: End Date: Served In: Service Number: Type of Discharge: DD214 Verified? War Zones:

Vehicles

Year: Make: Model: Type: Color: License Plate Number: State: Country:

Sentence Structure (Field)**Cause: AA – 951050231 – Pierce**

Convicted Name:	Date Of Sentence:	Cause Status:	Offense Category:
Shawn Francis	05/30/1996	Active	Murder 1
Distinct Supervision Type:	Start Date:	Scheduled End Date:	Consecutive Supervision:
CP	12/24/2017	12/24/2019	

Count: 1 – RCW 9A.32.030 – Murder 1

Count Start Date:	Supervision Length:	Length In Days:	Count End Date:	Stat Max:
12/24/2017	0Y, 24M, 0D	730	12/24/2019	Life
Violent Offense?	DW / FA Enhancement?	Anticipatory:		
Yes	N			

Count: 2 – RCW 9A.36.021 – Assault 2

Count Start Date:	Supervision Length:	Length In Days:	Count End Date:	Stat Max:
01/10/2021	0Y, 24M, 0D	730	01/10/2023	01/01/2030
Violent Offense?	DW / FA Enhancement?	Anticipatory:		
Yes	N			

Count: 3 – RCW 9A.56.200 – Robbery 1

Count Start Date:	Supervision Length:	Length In Days:	Count End Date:	Stat Max:
12/24/2017	0Y, 24M, 0D	730	12/24/2019	01/08/2025
Violent Offense?	DW / FA Enhancement?	Anticipatory:		
Yes	N	Attempt		

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Sentence Structure (Inmate)**Cause: AA - 951050231 - Pierce**

State:	Convicted Name:	Date Of Sentence:	Consecutive Cause:
Washington	Shawn Francis	05/30/1996	
Time Start Date:	Confinement Length:	Earned Release Date:	
06/04/1996	0Y, 304M, 0D	12/24/2017	

Count: 1 - RCW 9A.32.030 - Murder 1

Anticipatory:	Modifier:	Enhancement:	Mandatory:	Confinement Length:	ERT %:	ERD:	MaxEx:	Stat Max:	Violent Offense?
				0Y, 304M, 0D	15.00%	12/24/2017	03/08/2021	Life	Yes
Supervision Type:	Supervision Length:	Consecutive Count:	Hold To Stat Max Expiration:						
CP	0Y, 24M, 0D								

Count: 2 - RCW 9A.36.021 - Assault 2

Anticipatory:	Modifier:	Enhancement:	Mandatory:	Confinement Length:	ERT %:	ERD:	MaxEx:	Stat Max:	Violent Offense?
				1Y, 2M, 0D	33.33%	11/16/1996	01/07/1997	01/01/2030	Yes
Supervision Type:	Supervision Length:	Consecutive Count:	Hold To Stat Max Expiration:						
CP	0Y, 24M, 0D								

Count: 3 - RCW 9A.56.200 - Robbery 1

Anticipatory:	Modifier:	Enhancement:	Mandatory:	Confinement Length:	ERT %:	ERD:	MaxEx:	Stat Max:	Violent Offense?
Attempt				3Y, 4M, 15D	33.33%	10/23/1998	03/24/1999	01/08/2025	Yes
Supervision Type:	Supervision Length:	Consecutive Count:	Hold To Stat Max Expiration:						
CP	0Y, 24M, 0D								

Conditions**Cause: AA - 951050231 - Pierce**

Condition Name	Narrative	Imposing Authority	Start Date	End Date
Advise CCO-Prescribed Meds		Court Ordered	06/04/1996	
Breathalyzer		Court Ordered	05/30/1996	
CCO-Report		Court Ordered	05/30/1996	
Comply-Affirmative Acts		Court Ordered	06/04/1996	
Controlled Substance-Consume		Court Ordered	05/30/1996	
Controlled Substance-Possess		Court Ordered	05/30/1996	
DNA Testing		Court Ordered	05/30/1996	
Maintain Ed/Voc		Court Ordered	05/30/1996	
Maintain Employment		Court Ordered	05/30/1996	
No Contact- Victim(S)	D'ANN JACOBSEN OR IMMEDIATE FAMILY OF JASON LUCAS. NO CONTACT FOR LIFE.	Court Ordered	05/30/1996	
No Contact-Victim Family	Immediate Family Of Jason Lucas	Court Ordered	04/15/2010	
No Firearms/Deadly Weapon		Court Ordered	05/30/1996	

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Non-Sex Offender/Living	Court Ordered	06/04/1996
Obeys All Laws	Court Ordered	05/30/1996
Pay LFOs	Court Ordered	04/15/2010
Pay Supervision Fees	Court Ordered	05/30/1996
Urinalysis	Court Ordered	05/30/1996

Violations Summary

Offender Violations		
Violation Group Number	Level of Response	Response Date
There is no data to display.		

Gain-Loss**Cause - 951050231 - Pierce**

Cause Info			
Convicted Name: Shawn Francis	Date Of Sentence: 05/30/1996	Schedule End Date: 12/24/2019	Cause Status:
Offense Type: Murder 1	DOSA: No	Intake Complete: No	EM Flag: No
Distinct Supervision Info			
Cause Prefix: AA	Type: CP	Statutory Max Date: Life	Schedule End Date: 12/24/2019
		Tolling Indicator: No	
Supervision Activities			
Supervision Type	Activity Type	Activity Date	State
Supervising Officer			
Field Office			
There is no data to display.			
Reorder Include Transfer Activities			

External / Internal Movements

Movement Date/Time	From Location	To Location		Movement Type		Movement Reason		Created By
Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
AHCC	03/24/2011	LA28L	Jordan, Dennis P	70049141	03/10/2011			Lavor, Carolyn C
AHCC	03/16/2011	LA29U	Jordan, Dennis P	70049141	03/10/2011			Lavor, Carolyn C
AHCC	03/09/2011	LB64U	Jordan, Dennis P	70049141	03/10/2011			Jordan, Dennis P
AHCC	03/09/2011	LB64U	Jordan, Dennis P	70049141	03/10/2011			Lavor, Carolyn C
03/09/2011 12:37:06	WCC-RC	AHCC		Transfer Between Prisons		Return From Court		Lavor, Carolyn C
03/09/2011 07:24:02	WCC-RC	AHCC		Transfer Between Prisons		Return From Court		Ricker, Eugene K
Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
WCC-RC	03/01/2011	5F13L	Jordan, Dennis P	70049141	03/10/2011			Ricker, Eugene K

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03/01/2011 10:27:48	Pierce	WCC-RC		Temporary Absence From Prison		Return From Court		Brunetti, Melanie S
02/24/2011 06:16:08	WCC-RC	Pierce		Temporary Absence From Prison		Court Order		Ricker, Eugene K
Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
WCC-RC	02/17/2011	4F08U	Jordan, Dennis P	70049141	03/10/2011			Ricker, Eugene K
02/17/2011 01:27:13	AHCC	WCC-RC		Transfer Between Prisons		Court Order		Brunetti, Melanie S
02/17/2011 05:32:55	AHCC	WCC-RC		Transfer Between Prisons		Court Order		Lavor, Carolyn C
Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
AHCC	09/27/2010	LA51U	Jordan, Dennis P	70049141	09/15/2010			Lavor, Carolyn C
AHCC	09/15/2010	LA33U	Jordan, Dennis P	70049141	09/15/2010			Lavor, Carolyn C
AHCC	09/15/2010	LA33U	Jordan, Dennis P	70049141	09/15/2010			Hansen, Lorene D
09/15/2010 01:18:34	WCC-RC	AHCC		Transfer Between Prisons		Security Risk		Hansen, Lorene D
09/15/2010 06:28:40	WCC-RC	AHCC		Transfer Between Prisons		Security Risk		Ricker, Eugene K
Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
WCC-RC	09/08/2010	1F07L	Jordan, Dennis P	70049141	09/15/2010			Ricker, Eugene K
09/08/2010 01:49:04	MCC-WSR	WCC-RC		Transfer Between Prisons		Security Risk		Brunetti, Melanie S
09/08/2010 09:55:34	MCC-WSR	AHCC		Transfer Between Prisons		Security Risk		Mcaroy, Karen C
Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
MCC-WSR	04/29/2010	A122L	Pittsenbarger, Robt	70046561	02/24/2010			Mcaroy, Karen C
MCC-WSR	02/24/2010	A425U	Pittsenbarger, Robt	70046561	02/24/2010			Mcaroy, Karen C
MCC-WSR	02/24/2010	A425U	Pittsenbarger, Robt	70046561	02/24/2010			Chu, Leslie K
02/23/2010 12:50:13	MICC	MCC-WSR		Transfer Between Prisons		Facility Assignment Change		Mcaroy, Karen C
02/23/2010 09:45:00	MICC	MCC-WSR		Transfer Between Prisons		Facility Assignment Change		Chun Fook, Renée L
Facility	Bed	Bed ID	Assigned	APPENDIX 000196		Segregation	Segregation	Created By

Name	Assignment		Counselor	ID	Assignment	Placement	Narrative	
MICC	02/10/2010	A4181	Vess, Larry E	70051186	07/28/2009			Chun Fook, Renee L
MICC	02/10/2010	FC16	Vess, Larry E	70051186	07/28/2009			Hedgers, Gladys M
MICC	02/19/2009	A4221	Vess, Larry E	70051186	07/28/2009			Chun Fook, Renee L
MICC	02/19/2009	A4221	Jones, Rachel D	70051186	07/28/2009			Chun Fook, Renee L
MICC	02/19/2009	A4221	Jones, Rachel D	70051186	07/28/2009			Chun Fook, Renee L
MICC	02/19/2009	A4221	Walston, Donald R	70051464	01/15/2009			System, Obts
MICC	01/21/2009	C3281	Walston, Donald R	70051464	01/15/2009			Walner, Warren C
MICC	01/15/2009	C2092	Walston, Donald R	70051464	01/15/2009			Walner, Warren C
			Walston, Donald R	70051464	01/15/2009			Vess, Larry E
01/15/2009 09:30:00	WCC-RC	MICC		Transfer Between Prisons		Custody Change		Chun Fook, Renee L
01/15/2009 07:03:40	WCC-RC	MICC		Transfer Between Prisons		Custody Change		Ricker, Eugene K
Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
WCC-RC	01/15/2009	4A01U	Walston, Donald R	70051464	01/15/2009			Ricker, Eugene K
WCC-RC	01/14/2009	4A01U	Walston, Donald R	70051464	01/15/2009			Ricker, Eugene K
WCC-RC	01/12/2009	4E01F	Walston, Donald R	70051464	01/15/2009			Ricker, Eugene K
01/12/2009 01:53:22	MCC-WSR	WCC-RC		Transfer Between Prisons		Custody Change		Brunetti, Melanie S
01/12/2009 10:01:45	MCC-WSR	MICC		Transfer Between Prisons		Custody Change		Mcaroy, Karen C
Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
MCC-WSR	11/25/2008	D221L	Rosselet, Sue	70046558	09/12/2008			Mcaroy, Karen C
MCC-WSR	11/24/2008	T003A	Rosselet, Sue	70046558	09/12/2008			Robinson, Lindsey L
MCC-WSR	10/28/2008	D221L	Rosselet, Sue	70046558	09/12/2008			Robinson, Lindsey L
MCC-WSR	10/27/2008	T003A	Rosselet, Sue	70046558	09/12/2008	Pending Investigation		Robinson, Lindsey L

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MCC-WSR	09/25/2008	D221L	Rosselet, Sue	70046558	09/12/2008				Robinson, Lindsey L
MCC-WSR	09/23/2008	T003A	Rosselet, Sue	70046558	09/12/2008	Pending Investigation			Vantassel, Kimberly A
MCC-WSR	07/16/2008	D221L	Rosselet, Sue	70046558	09/12/2008				Robinson, Lindsey L
07/15/2008 10:32:00	MCC-IMU	MCC-WSR				Transfer Between Prisons	Disciplinary Problem		System, Obts
07/15/2008 10:30:00	MCC-IMU	MCC-WSR				Transfer Between Prisons	Disciplinary Problem		System, Obts
Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative		Created By
MCC-IMU	07/11/2008	S236	Rosselet, Sue	70046558	09/12/2008				System, Obts
07/11/2008 12:15:00	MCC-WSR	MCC-IMU				Transfer Between Prisons	Disciplinary Problem		System, Obts
07/11/2008 11:50:00	MCC-WSR	MCC-IMU				Transfer Between Prisons	Disciplinary Problem		System, Obts
Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative		Created By
MCC-WSR	07/08/2008	D221L	Rosselet, Sue	70046558	09/12/2008				System, Obts
MCC-WSR	07/07/2008	T001A	Rosselet, Sue	70046558	09/12/2008				System, Obts
MCC-WSR	06/03/2008	D221L	Rosselet, Sue	70046558	09/12/2008				System, Obts
MCC-WSR	06/02/2008	T002A	Rosselet, Sue	70046558	09/12/2008				System, Obts
MCC-WSR	05/06/2008	D221L	Rosselet, Sue	70046558	09/12/2008				System, Obts
MCC-WSR	05/05/2008	T003A	Rosselet, Sue	70046558	09/12/2008				System, Obts
04/16/2008 03:25:00	Snohomish	MCC-WSR				Temporary Absence From Prison	Medical Completed		System, Obts
04/16/2008 01:02:00	MCC-WSR	Snohomish				Temporary Absence From Prison	Medical Needs		System, Obts
Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative		Created By
MCC-WSR	03/03/2008	D221L	Rosselet, Sue	70046558	09/12/2008				System, Obts
MCC-WSR	03/02/2008	T002A	Rosselet, Sue	70046558	09/12/2008				System, Obts
MCC-WSR	03/02/2008	T002A	Rosselet, Sue	70046558	09/12/2008				System, Obts
MCC-WSR	03/02/2008	T004A	Rosselet, Sue	70046558	09/12/2008				System,

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MCC-WSR	01/30/2008	D221L	Rosselet, Sue	70046558	09/12/2008
MCC-WSR	01/29/2008	T001A	Rosselet, Sue	70046558	09/12/2008
MCC-WSR	01/02/2008	T003A	Rosselet, Sue	70046558	09/12/2008
MCC-WSR	01/02/2008	D221L	Rosselet, Sue	70046558	09/12/2008
MCC-WSR	11/27/2007	D221L	Rosselet, Sue	70046558	09/12/2008
MCC-WSR	11/26/2007	T003A	Rosselet, Sue	70046558	09/12/2008
MCC-WSR	10/16/2007	D221L	Rosselet, Sue	70046558	09/12/2008
MCC-WSR	10/15/2007	T003A	Rosselet, Sue	70046558	09/12/2008
MCC-WSR	09/19/2007	D221L	Rosselet, Sue	70046558	09/12/2008
MCC-WSR	09/17/2007	T003A	Rosselet, Sue	70046558	09/12/2008
MCC-WSR	06/25/2007	D221L	Rosselet, Sue	70046558	09/12/2008
MCC-WSR	06/24/2007	T003A	Rosselet, Sue	70046558	09/12/2008
MCC-WSR	04/16/2007	D221L	Rosselet, Sue	70046558	09/12/2008
MCC-WSR	04/15/2007	T003A	Rosselet, Sue	70046558	09/12/2008
MCC-WSR	03/12/2007	D221L	Rosselet, Sue	70046558	09/12/2008
MCC-WSR	03/11/2007	T004A	Rosselet, Sue	70046558	09/12/2008
MCC-WSR	02/05/2007	D221L	Rosselet, Sue	70046558	09/12/2008
MCC-WSR	02/04/2007	T002A	Rosselet, Sue	70046558	09/12/2008
MCC-WSR	12/27/2006	D221L	Rosselet, Sue	70046558	09/12/2008
MCC-WSR	12/26/2006	T002A	Rosselet, Sue	70046558	09/12/2008
MCC-WSR	11/13/2006	D221L	Rosselet, Sue	70046558	09/12/2008
MCC-WSR	11/12/2006	T003A	Rosselet, Sue	70046558	09/12/2008

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MCC-WSR	09/25/2006	D221L	Rosselet, Sue	70046558	09/12/2008			System, Obts
MCC-WSR	09/24/2006	T002A	Rosselet, Sue	70046558	09/12/2008			System, Obts
MCC-WSR	07/05/2006	D221L	Rosselet, Sue	70046558	09/12/2008			System, Obts
MCC-WSR	07/03/2006	T001A	Rosselet, Sue	70046558	09/12/2008			System, Obts
MCC-WSR	04/26/2006	D221L	Rosselet, Sue	70046558	09/12/2008			System, Obts
MCC-WSR	04/24/2006	T001A	Rosselet, Sue	70046558	09/12/2008			System, Obts
MCC-WSR	03/08/2006	D221L	Rosselet, Sue	70046558	09/12/2008			System, Obts
MCC-WSR	03/06/2006	T003A	Rosselet, Sue	70046558	09/12/2008			System, Obts
MCC-WSR	02/08/2006	D221L	Rosselet, Sue	70046558	09/12/2008			System, Obts
MCC-WSR	02/06/2006	T003A	Rosselet, Sue	70046558	09/12/2008			System, Obts
MCC-WSR	12/28/2005	D221L	Rosselet, Sue	70046558	09/12/2008			System, Obts
MCC-WSR	12/26/2005	T003A	Rosselet, Sue	70046558	09/12/2008			System, Obts
MCC-WSR	11/16/2005	D221L	Rosselet, Sue	70046558	09/12/2008			System, Obts
MCC-WSR	11/14/2005	T002A	Rosselet, Sue	70046558	09/12/2008			System, Obts
MCC-WSR	09/30/2005	D221L	Rosselet, Sue	70046558	09/12/2008			System, Obts
09/30/2005 11:28:00	Snohomish	MCC-WSR		Temporary Absence From Prison		Medical Completed		System, Obts
09/30/2005 09:59:00	MCC-WSR	Snohomish		Temporary Absence From Prison		Medical Needs		System, Obts
Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
MCC-WSR	09/27/2005	H010A	Rosselet, Sue	70046558	09/12/2008			System, Obts
MCC-WSR	10/01/2004	D221L	Rosselet, Sue	70046558	09/12/2008			System, Obts
MCC-WSR	09/18/2004	D207L	Rosselet, Sue	70046558	09/12/2008			System, Obts
MCC-WSR	08/11/2003	D221L	Rosselet, Sue	70046558	09/12/2008			System, Obts
MCC-WSR	07/23/2003	D420L	Rosselet, Sue	70046558	09/12/2008			Mcaroy,

APPENDIX 000200

Karen C

MCC-WSR 07/23/2003 D420L Kirby, Bernard F 70046558 06/25/2008

Mcaroy,
Karen C

MCC-WSR 07/23/2003 D420L Rosselet, Sue 70046558 09/12/2008

System,
Obts

07/23/2003 12:47:00 WSP-Main MCC-WSR Transfer Between Prisons Facility Assignment Change

System,
Obts

07/23/2003 05:30:00 WSP-Main MCC-WSR Transfer Between Prisons Facility Assignment Change

System,
Obts

Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
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WSP-Main 12/16/2002 22021 (Vacant) 70046141 12/16/2002

System,
Obts

WSP-Main 12/16/2002 7B094 (Vacant) 70046141 12/16/2002

System,
Obts

(Vacant) 70046141 12/16/2002

System,
Obts

WSP-Main 12/16/2002 7B094 (Vacant) BG58 12/16/2002

System,
Obts

WSP-Main 10/28/2002 7B094 (Vacant) 70046141 10/21/2002

System,
Obts

WSP-Main 10/21/2002 7B091 (Vacant) 70046141 10/21/2002

System,
Obts

(Vacant) 70046141 10/21/2002

System,
Obts

WSP-Main 08/06/2002 8B143 (Vacant) 70046138 08/06/2002

System,
Obts

(Vacant) 70046138 08/06/2002

System,
Obts

WSP-Main 08/01/2002 7A052 (Vacant) 70046141 08/01/2002

System,
Obts

08/01/2002 02:00:00 WCC-IMU WSP-Main Transfer Between Prisons Custody Change

System,
Obts

08/01/2002 06:00:00 WCC-IMU WSP-Main Transfer Between Prisons Custody Change

System,
Obts

Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
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(Vacant) 70046141 08/01/2002

System,
Obts

WCC-IMU 06/14/2002 D107 (Vacant) 70045125 01/15/2001

System,
Obts

06/14/2002 09:46:00 WCC-TC WCC-IMU Transfer Between Prisons Program Change

System,
Obts

06/14/2002 09:30:00 WCC-TC WCC-IMU Transfer Between Prisons Program Change

System,
Obts**APPENDIX 000201**

Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
WCC-TC	06/08/2002	PC07L	(Vacant)	70045125	01/15/2001			System, Obts
WCC-TC	06/05/2002	PC07U	(Vacant)	70045125	01/15/2001			System, Obts
WCC-TC	11/07/2001	PC07L	(Vacant)	70045125	01/15/2001			System, Obts
11/07/2001 12:44:00	WCC-IMU	WCC-TC		Transfer Between Prisons	Program Change			System, Obts
11/07/2001 12:30:00	WCC-IMU	WCC-TC		Transfer Between Prisons	Program Change			System, Obts
Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
WCC-IMU	11/02/2001	B204	(Vacant)	70045125	01/15/2001			System, Obts
11/02/2001 07:07:00	WCC-TC	WCC-IMU		Transfer Between Prisons	Program Change			System, Obts
11/02/2001 07:06:00	WCC-TC	WCC-IMU		Transfer Between Prisons	Program Change			System, Obts
Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
WCC-TC	09/07/2001	PC07L	(Vacant)	70045125	01/15/2001			System, Obts
09/07/2001 12:54:00	WCC-IMU	WCC-TC		Transfer Between Prisons	Program Change			System, Obts
09/07/2001 12:53:00	WCC-IMU	WCC-TC		Transfer Between Prisons	Program Change			System, Obts
Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
WCC-IMU	07/25/2001	E111	(Vacant)	70045125	01/15/2001			System, Obts

07/25/2001 06:55:00	WCC-TC	WCC-IMU		Transfer Between Prisons	Program Change			System, Obts
07/25/2001 06:54:00	WCC-TC	WCC-IMU		Transfer Between Prisons	Program Change			System, Obts
Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
WCC-TC	08/24/2000	PG03U	(Vacant)	70045125	01/15/2001			System, Obts
WCC-TC	08/24/2000	PG03U	(Vacant)	70045341	08/24/2000			System, Obts
WCC-TC	08/24/2000	PG03U	(Vacant)	70045341	08/24/2000			System, Obts
08/24/2000	WCC-RC	WCC-TC		Transfer Between Prisons	Program Change			System,

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08:28:00

Obts

08/24/2000

08:27:00

WCC-RC

WCC-TC

Transfer Between Prisons Program Change

System,
ObtsFacility
NameBed
Assignment

Bed ID

Assigned
CounselorPosition
IDCounselor
AssignmentSegregation
PlacementSegregation
Narrative

Created By

WCC-RC

08/23/2000

4E01F

(Vacant)

70045302

08/23/2000

System,
Obts

WCC-RC

08/23/2000

4E01F

(Vacant)

70045302

08/23/2000

System,
Obts08/23/2000
04:03:00

WSP-Main

WCC-RC

Transfer Between Prisons Program Change

System,
Obts08/23/2000
05:30:00

WSP-Main

WCC-TC

Transfer Between Prisons Program Change

System,
ObtsFacility
NameBed
Assignment

Bed ID

Assigned
CounselorPosition
IDCounselor
AssignmentSegregation
PlacementSegregation
Narrative

Created By

WSP-Main

11/08/1999

7F042

(Vacant)

70046141

02/10/1999

System,
Obts

WSP-Main

06/14/1999

7C074

(Vacant)

70046141

02/10/1999

System,
Obts

WSP-Main

02/24/1999

7C071

(Vacant)

70046141

02/10/1999

System,
Obts

WSP-Main

02/17/1999

7C081

(Vacant)

70046141

02/10/1999

System,
Obts

WSP-Main

02/10/1999

7E031

(Vacant)

70046141

02/10/1999

System,
Obts

(Vacant)

70046141

02/10/1999

System,
Obts

WSP-Main

01/15/1999

8C082

(Vacant)

70046138

03/18/1998

System,
Obts

WSP-Main

03/18/1998

8D042

(Vacant)

70046138

03/18/1998

System,
Obts

(Vacant)

70046138

03/18/1998

System,
Obts

WSP-Main

03/11/1998

1B17N

(Vacant)

70046066

03/11/1998

System,
Obts

WSP-Main

03/11/1998

1B17N

(Vacant)

70046066

03/11/1998

System,
Obts

WSP-Main

10/10/1997

8D043

(Vacant)

70046138

07/16/1996

System,
Obts

WSP-Main

03/14/1997

8D031

(Vacant)

70046138

07/16/1996

System,
Obts

WSP-Main

08/08/1996

8D124

(Vacant)

70046138

07/16/1996

System,
Obts

WSP-Main

07/16/1996

8C091

(Vacant)

70046138

07/16/1996

System,
Obts**APPENDIX 000203**

		(Vacant)	70046138	07/16/1996				System, Obts
WSP-Main	07/11/1996	1A04N2 (Vacant)	70046066	07/11/1996				System, Obts
WSP-Main	07/11/1996	1A04N2 (Vacant)	70046066	07/11/1996				System, Obts
07/11/1996 03:40:00	WCC-RC	WSP-Main	Transfer Between Prisons		Initial Classification			System, Obts
07/11/1996 06:06:00	WCC-RC	WSP-Main	Transfer Between Prisons		Initial Classification			System, Obts
Facility Name	Bed Assignment	Bed ID	Assigned Counselor	Position ID	Counselor Assignment	Segregation Placement	Segregation Narrative	Created By
WCC-RC	07/03/1996	4E12U	(Vacant)	70045302	07/02/1996			System, Obts
WCC-RC	07/02/1996	4E08F	(Vacant)	70045302	07/02/1996			System, Obts
WCC-RC	07/02/1996	4E08F	(Vacant)	70045302	07/02/1996			System, Obts
WCC-RC	06/28/1996	3C01U	(Vacant)	70045089	06/04/1996			System, Obts
WCC-RC	06/27/1996	3C02F	(Vacant)	70045089	06/04/1996			System, Obts
WCC-RC	06/04/1996	1E04U	(Vacant)	70045089	06/04/1996			System, Obts
WCC-RC	06/04/1996	1E04U	(Vacant)	70045089	06/04/1996			System, Obts
06/04/1996 10:50:00	Pierce	WCC-RC	Admission To Prison		Initial Classification			System, Obts

Earned Time

Start Date	End Date	Action Date	Type	Reason	Days
06/04/1996	06/01/1997	06/04/1996	Earned		60.32
06/01/1997	06/01/1998	06/01/1997	Earned		49.83
06/01/1998	06/01/1999	06/01/1998	Earned		21.47
06/01/1999	06/01/2000	06/01/1999	Earned		21.53
06/01/2000	08/01/2000	06/01/2000	Earned		3.59
08/01/2000	09/01/2000	08/01/2000	Earned		1.82
09/01/2000	10/01/2000	09/01/2000	Earned		1.76
10/01/2000	11/01/2000	10/01/2000	Earned		1.82
11/01/2000	12/01/2000	11/01/2000	Earned		1.76
12/01/2000	01/01/2001	12/01/2000	Earned		1.82
01/01/2001	02/01/2001	01/01/2001	Earned		1.82

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02/01/2001	03/01/2001	02/01/2001	Earned		1.65
03/01/2001	04/01/2001	03/01/2001	Earned		1.82
04/01/2001	05/01/2001	04/01/2001	Earned		1.76
05/01/2001	05/01/2002	05/01/2001	Earned		21.47
05/01/2002	08/01/2002	05/01/2002	Earned		5.41
06/01/2002	08/01/2002	06/01/2002	Not Earned	Segregation	3.59
08/01/2002	06/01/2003	08/01/2002	Earned		17.88
06/01/2003	09/01/2004	06/01/2003	Earned		26.94
09/01/2004	01/01/2009	01/09/2009	Earned	Update Required	93.12
01/01/2009	02/01/2009	02/09/2009	Earned		1.82
02/01/2009	01/01/2010	01/21/2010	Earned		19.65
01/01/2010	09/01/2010	09/08/2010	Earned	Update Required	14.29
09/01/2010	10/01/2010	10/29/2010	Earned		1.76
10/01/2010	01/10/2011	01/10/2011	Earned	Update Required	5.94

Infraction Summary

Offender Infraction					
Infraction Group Number	Overall Infraction Report Status	Hearing Type	Infraction Data Indicator	Incident Date	Violation Codes
1	Hearing Complete	Full Hearing	Serious	On 02/09/1998	600 , 710
3	Hearing Complete	Full Hearing	Serious	On 01/22/1999	702
4	Hearing Complete	Full Hearing	Serious	On 09/24/1999	755
5	Hearing Complete	Full Hearing	Serious	On 06/28/2001	599 , 599
7	Hearing Complete	Full Hearing	Serious	On 11/02/2001	710
8	Hearing Complete	Full Hearing	Serious	On 06/11/2002	603

Offender Holds

Start Date/Time	Hold Reason	Hold Location	Notes Exist	Authorizing Staff	Hold Until Date	Closed Date	Closed By
01/10/2011 11:52:05	Facility Plan Review	AHCC		<u>Jordan, Dennis P</u>	02/12/2011	01/13/2011	<u>Jordan, Dennis P</u>
02/10/2010 12:07:08	Facility Plan Review	MICC		<u>Jones, Rachel D</u>	03/12/2010	02/11/2010	<u>Jones, Rachel D</u>
07/17/2009 11:47:35	Reason & Rehabilitation	MICC	Yes	<u>Bowen, Kevin G</u>	12/01/2009	12/02/2009	<u>Bowen, Kevin G</u>
02/05/2009 12:13:01	Facility Plan Review	MICC		<u>Walston, Donald R</u>	03/11/2009	02/12/2009	<u>Walston, Donald R</u>
10/13/2008 14:16:46	Facility Plan Review	MCC-WSR		<u>Kirby, Bernard F</u>	11/12/2008	11/21/2008	<u>Kirby, Bernard F</u>
09/06/2006 07:25:00	Infraction Hold	MCC-WSR		<u>Anderson, Kimberly D</u>	12/06/2006	09/15/2006	
02/24/2006 07:51:00	Industries	MCC-WSR		<u>Polson, Dianna F</u>	06/24/2007	07/25/2007	
09/07/2005 12:43:00	Medical Hold	MCC-WSR		<u>System, Obts</u>	10/15/2005	10/24/2005	
07/20/2005 08:24:00	Industries	MCC-WSR		<u>Polson, Dianna F</u>	11/21/2005	12/08/2005	

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10/14/2004 10:24:00	Industries	MCC-WSR	<u>System, Obts</u>	05/03/2007	04/25/2005
02/18/2004 7:31:00	Industries	MCC-WSR	<u>Svstem, Obts</u>	05/03/2007	10/11/2004
04/10/2003 11:01:00	Industries	WSP-Main	<u>Barker, Steven L</u>	07/31/2003	06/17/2003
02/18/2003 10:03:00	Infraction Hold	WSP-Main	<u>Gaines, Vaaia S</u>	04/11/2003	03/04/2003
12/04/2002 13:02:00	Medical Hold	WSP-Main	<u>System, Obts</u>	03/04/2003	06/17/2003
07/23/2002 10:53:00	Infraction Hold	WCC-IMU	<u>Allmendinger, Jennifer</u> F	08/24/2002	07/29/2002
11/05/2001 13:06:00	Infraction Hold	WCC-IMU	<u>Allmendinger, Jennifer</u> F	12/05/2001	12/27/2001
08/29/2001 00:14:00	Infraction Hold	WCC-IMU	<u>Allmendinger, Jennifer</u> F	09/28/2001	11/07/2001
07/30/2001 08:54:00	Infraction Hold	WCC-IMU	<u>Allmendinger, Jennifer</u> F	08/29/2001	08/06/2001
01/20/2000 06:14:00	Infraction Hold	WSP-Main	<u>Gaines, Vaaia S</u>	03/18/2000	02/03/2000
09/27/1999 08:21:00	Infraction Hold	WSP-Main	<u>Gaines, Vaaia S</u>	11/24/1999	12/09/1999
01/22/1999 00:43:00	Infraction Hold	WSP-Main	<u>Gaines, Vaaia S</u>	03/22/1999	02/10/1999
07/13/1998 06:42:00	Infraction Hold	WSP-Main	<u>Gaines, Vaaia S</u>	09/10/1998	07/20/1998
03/13/1998 06:30:00	Infraction Hold	WSP-Main	<u>Gaines, Vaaia S</u>	05/10/1998	03/23/1998
02/10/1998 05:50:00	Infraction Hold	WSP-Main	<u>Gaines, Vaaia S</u>	04/09/1998	02/26/1998
05/15/1997 13:01:00	Education - Basic Skills	WSP-Main	<u>Peddicord, Jennifer L</u>	12/18/1997	12/19/1997

Custody Facility Plan History

Next Review Date

01/10/2012

Current Incarceration

Review Type/Purpose	Assigned Custody	Override Reason	Location	In-Effect Date	Status
Regular Review	Minimum 3 - Long Term Minimum		AHCC	01/13/2011	In-Effect
Regular Review	Minimum 3 - Long Term Minimum		MICC	02/11/2010	Archive
Intake with Plan Change	Minimum 3 - Long Term Minimum		MICC	02/12/2009	Archive
Plan Change	Minimum 3 - Long Term Minimum		MCC-WSR	11/21/2008	Archive
Regular Review	Medium	Murder First		10/09/2007	Archive
Regular Review	Medium	Murder First		09/20/2006	Archive
Regular Review	Medium	Murder First		09/07/2005	Archive
Plan Change	Medium	Murder First		10/13/2004	Archive
Plan Change	Close			07/11/2003	Archive
Target Promotion	Close			07/29/2002	Archive
Regular Review	Medium	Murder First		06/04/2002	Archive

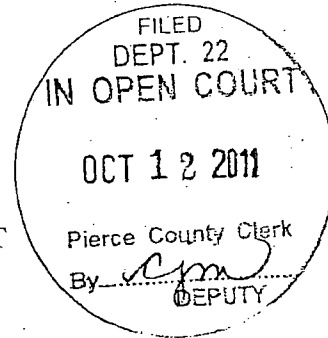
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Regular Review	Medium	Murder First	06/12/2001	Archive
Regular Review	Medium	Murder First	07/25/2000	Archive
Regular Review	Close	Murder First	06/16/1999	Archive
Regular Review	Close	Murder First	06/29/1998	Archive
Regular Review	Close	Murder First	06/23/1997	Archive
Initial	Close		07/03/1996	Archive

FILED
IN COUNTY CLERK'S OFFICE

A.M. OCT 12 2011 P.M.
PIERCE COUNTY, WASHINGTON
KEVIN STOCK, County Clerk
BY _____ DEPUTY

Judge John R. Hickman
Dept. 22
Hearing: Oct. 12, 2011
9:00 a.m. Telephonic



STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT

SHAWN D. FRANCIS,

Plaintiff,

v.

DEPARTMENT OF CORRECTIONS, a
subdivision of the State of Washington,

Defendant.

NO. 10-2-10630-3

~~(PROPOSED)~~ ORDER AND
FINDINGS RE: PENALTIES

This matter came before the Court on September 16, 2011, on the Court's order to determine penalties. The Court heard argument from Shawn Francis, Plaintiff, and Andrea Vingo, Assistant Attorney General, counsel for the Department of Corrections. The Court also reviewed and considered the following: 1) Plaintiff's Motion for Summary Judgment, including exhibits; 2) Defendant's Response to Summary Judgment, including exhibits; 3) Plaintiff's Reply to Motion for Summary Judgment, including exhibits; 4) Defendant's Response to Penalties.

NOW THEREFORE, being fully advised, the Court **ORDERS** as follows:

1. On July 15, 2011, the Court found that the Defendant had violated the Public Records Act (PRA) and entered an order reflecting this decision.

2. The Court finds that RCW 42.56.565 (as amended by Laws of 2011, ch. 300, §§ 1, 2) applies in this case because the judgment was not yet final as of July 25, 2011, and the Plaintiff is currently an inmate and was an inmate at the time of his PRA request. The Court

1 further finds that the Plaintiff's has the burden of persuasion to show that the Department acted in
2 bad faith in order to receive penalties.

3 3. The Court finds that the Defendant acted in "bad faith" for purposes of RCW
4 42.56.565 (as amended by Laws of 2011, ch. 300, §§ 1, 2). The Court determined bad faith by
5 applying the sixteen *Yousoufian V* mitigating and aggravating factors to the facts of this case.
6 *Yousoufian v. Office of Ron Sims*, 168 Wn.2d 444,467-8, 229 P.3d 735, (2010) (*Yousoufian*
7 *V*).

8 4. The Court awards penalties to the Plaintiff in the amount of \$5 per day for 353
9 days of the penalty period, and \$10 per day for 273 days of the penalty period, for total
10 penalties of \$4,495.00. This amount is to be paid into the Plaintiff's inmate account.

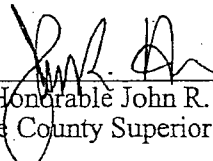
11 5. The Court is awarding no costs to the Plaintiff.

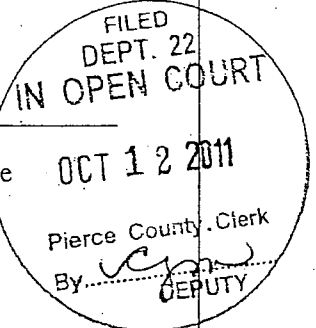
12 DATED this 11 day of October, 2011.

13
14
15 Submitted by:
16 ROBERT M. MCKENNA
17 Attorney General

18
19 ANDREA VINGO, WSBA #26183
20 Assistant Attorney General
21 Counsel for the Department of Corrections

22 SHAWN FRANCIS
23 Plaintiff, Pro Se
24
25
26


The Honorable John R. Hickman
Pierce County Superior Court Judge



10/12/11
DATE

appended by [signature]
DATE in [signature]
10/12/11